

TITLE 8. INDUSTRIAL RELATIONS  
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS  
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION  
SUBCHAPTER 2. WORKERS' COMPENSATION APPEALS BOARD -RULES AND PRACTICE PROCEDURE

**ARTICLE 1. GENERAL**

§ 10300. Adoption, Amendment or Rescission of Rules.

Notices required by Labor Code Sections 5307 and 5307.4 shall be served by the Appeals Board by regular mail, fax, electronic mail or any similar technology, not less than thirty (30) days prior to the date of hearing on those who have on file with the Secretary of the Workers' Compensation Appeals Board in San Francisco a written request for notification. Notice of action taken shall be served on the same persons by regular mail within thirty (30) days following the filing of any order pertaining to the rules with the Secretary of State.

Note: Authority cited: Section 5307, Labor Code. Reference: Section 5307.4, Labor Code.

§ 10301. Definitions.

As used in this subchapter:

- (a) "Administrative Director" means the Administrative Director of the Division of Workers' Compensation or his or her designee.
- (b) "Adjudication file" or "ADJ file" means a case file in which the jurisdiction of the Workers' Compensation Appeals Board has been invoked and which is maintained by the Division of Workers' Compensation in paper format, electronic format, or both, including a temporary paper case file.
- (c) "Appeals Board" means the commissioners and deputy commissioners of the Workers' Compensation Appeals Board acting en banc or in panels.
- (d) "Applicant" means any person asserting a right to relief under the provisions of Labor Code Section 5300.
- (e) "Application for Adjudication" or "application" means the initial pleading that asserts a right to relief under the provisions of Labor Code Section 5300.
- (f) "Carve-out case" means a workers' compensation case that, in accordance with the criteria specified in Labor Code sections 3201.5 through 3201.9, is subject to an alternative dispute resolution (ADR) system that supplements or replaces all or part of the dispute resolution processes contained in Division 4 of the Labor Code.
- (g) "Case opening document" means any document that creates an adjudication case and invokes the jurisdiction of the Workers' Compensation Appeals Board for the first time.
- (h) "Court Administrator" means the administrator of the workers' compensation adjudicatory process at the trial level, or his or her designee.
- (i) "Declaration of Readiness to Proceed" or "Declaration of Readiness" means a request for a proceeding at a district office.
- (j) "Declaration of Readiness to Proceed to Expedited Hearing" means a request for a proceeding at a district office pursuant to Labor Code section 5502(b).
- (k) "Defendant" means any person against whom a right to relief is claimed.
- (l) "District office" means a location of a trial court of the Workers' Compensation Appeals Board.

(m) "Document" is a pleading, petition, medical report, record, declaration, exhibit, or another filing submitted by a party or lien claimant, including an electronically filed document or a scanned version of a document that was filed in paper form. Each medical report or other record having a different author and/or a different date is a separate "document."

(n) "Document cover sheet" means the form adopted by the Court Administrator under section 10232.1, which is placed on top of a document or set of documents being filed at one time in a specific case.

(o) "Document separator sheet" means the form adopted by the Court Administrator under section 10232.2, which is placed on top of each individual document, when one or more documents are being filed at the same time in the same case, and which is placed on top of each individual attachment to each document being filed, when a document has one or more attachments.

(p) "Electronic Adjudication Management System" or "EAMS" means the computerized case management system used by the Division of Workers' Compensation to electronically store and maintain adjudication files and to perform other case management functions.

(q) "Fax" means a document that has been electronically served by a facsimile (fax) machine or other fax technology.

(r) To "file" a document means to deliver a document or cause it to be delivered to the district office with venue or to the Appeals Board for the purpose of having it included in the adjudication file.

(s) "Hearing" means any trial, mandatory settlement conference, rating mandatory settlement conference, status conference, lien conference, or priority conference at a district office or before the Appeals Board.

(t) "Lien claimant" means any person or entity claiming payment under the provisions of Labor Code section 4903 or 4903.1.

(u) "Lien conference" means a proceeding held for the purpose of assisting the parties in resolving disputed lien claims pursuant to Labor Code section 4903 or 4903.1 or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a lien trial.

(v) "Mandatory settlement conference" means a proceeding to assist the parties in resolving their dispute or, if the dispute cannot be resolved, to frame the issues and stipulations in preparation for a trial.

(w) "Optical character recognition form" or "OCR form" means a paper form designed to be scanned so that its information is automatically extracted and stored in EAMS.

(x) "Party" means: (1) a person claiming to be an injured employee or the dependent of a deceased employee; (2) a defendant; or (3) a lien claimant where either (A) the underlying case of the injured employee or the dependent(s) of an injured employee has been resolved or (B) the injured employee or the dependent(s) of a deceased employee choose(s) not to proceed with his, her, or their case.

(y) "Petition" means any request for action by the Workers' Compensation Appeals Board other than an Application for Adjudication, an Answer or a Declaration of Readiness to Proceed.

(z) "Priority conference" means a proceeding in which the applicant is represented by an attorney and the issues in dispute at the time of the proceeding include employment and/or injury arising out of and in the course of employment.

(aa) "Rating mandatory settlement conference" means a mandatory settlement conference conducted to facilitate determination of the existence and extent of permanent disability through the use of informal ratings issued by the Disability Evaluation Unit, where the only unresolved issues are permanent disability and the need for future medical treatment.

(bb) "Regular hearing" means a trial.

(cc) To "serve" a document means to personally deliver a copy of the document, or to send it in a manner

permitted by these rules or the rules of the Court Administrator, to a party, lien claimant, or attorney who is entitled to a copy of the document.

(dd) "Status conference" means a proceeding set for the purpose of ascertaining if there are genuine disputes requiring resolution, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of facilitating preparation for trial if a trial is necessary.

(ee) "Submission" means the closing of the record to the receipt of further evidence or argument.

(ff) "Trial" means a proceeding set for the purpose of receiving evidence.

(gg) "Venue" means the district office, as established by Labor Code section 5501.5 or 5501.6, at which any trial level proceedings will be conducted and from which any trial level orders, decisions, or awards will be issued.

(hh) "Workers' Compensation Appeals Board" means the Appeals Board, commissioners, deputy commissioners, presiding workers' compensation judges and workers' compensation judges.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 110, 130, 131, 134, 3201.5 et seq., 4903 et seq., 5300, 5307, 5309, 5310, 5500, 5500.3, 5501, 5501.5, 5501.6, 5502, 5700, 5701 and 5808, Labor Code.

§ 10302. Working Titles of Workers' Compensation Administrative Law Judges and Presiding Workers' Compensation Administrative Law Judges.

The working titles of "workers' compensation administrative law judge" (formerly, "referee") and "presiding workers' compensation administrative law judge" (formerly, "referee in charge") shall be respectively "workers' compensation judge" and "presiding workers' compensation judge." The term "workers' compensation judge" shall include pro tempore judges appointed pursuant to section 10350.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 27, 123.5, 123.7, 5309, 5310 and 5312, Labor Code.

§ 10304. Article and Section Headings.

Article and section headings shall not be deemed to limit or modify the meaning or intent of the provisions of any section hereof.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Sections 133, 5307, Labor Code.

§ 10306. Case Names. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§ 10308. Official Address Record. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§ 10322. Workers' Compensation Appeals Board Records Not Subject to Subpoena.

The records, files and proceedings of the Workers' Compensation Appeals Board shall not be taken from its offices either on informal request or in response to a subpoena duces tecum or any order issued out of any other court or tribunal. Except as precluded by Civil Code Section 1798.24, or Government Code Section 6254, certified copies of portions of the records desired by litigants shall be delivered upon payment of fees as

provided in the Rules of the Administrative Director.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 127, 5811, Labor Code.

§ 10324. Ex Parte Communications.

(a) No document, including letters or other writings, shall be filed by a party or lien claimant with the Workers' Compensation Appeals Board unless service of a copy thereof is made on all parties together with the filing of a proof of service as provided for in Rule 10505.

(b) When the Appeals Board or a workers' compensation judge receives an ex parte letter or other document from any party or lien claimant in a case pending before the Appeals Board or the workers' compensation judge, he, she, or it shall serve copies of the letter or document on all other parties to the case with a cover letter explaining that the letter or document was received ex parte in violation of this rule.

(c) No party or lien claimant shall discuss with the Appeals Board or a workers' compensation judge the merits of any case pending before the Appeals Board or that judge without the presence of all necessary parties to the proceeding, except as provided by these rules.

(d) All correspondence concerning the examination by and the reports of a physician appointed by a workers' compensation judge or the Appeals Board pursuant to Labor Code section 5701, 5703.5, 5706, or 5906 shall be made, respectively, through the workers' compensation judge or the Appeals Board, and no party, attorney or representative shall communicate with that physician regarding the merits of the case unless ordered to do so.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5701, 5703.5, 5706, 5708 and 5906, Labor Code.

**ARTICLE 2. POWERS, DUTIES AND RESPONSIBILITIES**

§ 10340. Appeals Board Decisions and Orders.

In accordance with Labor Code Section 115, the following orders, decisions and awards shall be issued only by the Appeals Board:

(a) All orders dismissing, denying and granting petitions for reconsideration and decisions thereon.

(b) All decisions that terminate proceedings on reconsideration, including, but not limited to, findings, orders, awards, orders approving or disapproving compromise and release, orders allowing or disallowing liens, and orders for dismissal.

(c) All orders, including interim and interlocutory orders, made after reconsideration has been granted and while proceedings are pending on reconsideration, including but not limited to, orders taking off calendar, orders joining or dismissing parties, and orders allowing or disallowing liens. Unless otherwise instructed by the Appeals Board, the authority of the workers' compensation judge to whom a case has been referred for proceedings on reconsideration is as set out in Section 10862 of these Rules.

(d) Except for sanctions and contempt, orders in disciplinary proceedings against attorneys or other agents.

(e) Decisions on remittitur.

(f) Orders disqualifying a workers' compensation judge under Labor Code Section 5311.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 115, 5311, Labor Code.

§ 10341. En Banc Decisions.

En banc decisions of the Appeals Board are binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of stare decisis.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 115, Labor Code.

§ 10342. Appeals Board, Member Orders.

The following orders may be issued only by the Appeals Board or a member thereof:

(a) approving undertakings on stays of proceedings on reconsideration and petitions for writ of review; and

(b) directing exhumation or autopsy.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Sections 115, 5706, 5707 and 6002, Labor Code.

§ 10344. Appeals Board, Commissioner, Deputy Commissioner and Presiding Workers' Compensation Judge Orders.

The following may be issued only by the Appeals Board, a commissioner, a deputy commissioner or a presiding workers' compensation judge:

(a) orders issuing certified copies of orders, decisions or awards except that a certified copy may be issued by a presiding workers' compensation judge only if the time for seeking reconsideration and judicial review has expired, and no proceedings are pending on reconsideration or judicial review;

(b) orders staying, quashing and recalling writs of execution and fixing and approving undertaking thereon;

(c) orders directing entry of satisfaction of judgment; and

(d) orders issuing, recalling, quashing, discharging and staying writs of attachment and fixing and approving undertakings thereon.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Sections 6000, 6001 and 6002, Labor Code.

§ 10346. Assignment or Transfer of Cases.

(a) The presiding workers' compensation judge has full responsibility for the assignment of cases to the workers' compensation judges of each office. The presiding workers' compensation judge may utilize EAMS to assign cases. The presiding workers' compensation judge shall transfer to another workers' compensation judge the proceedings on any case in the event of the death, extended absence, unavailability, or disqualification of the workers' compensation judge to whom it has been assigned, and may otherwise reassign those cases if no oral testimony has been received therein, or if the requirements of Labor Code Section 5700 have been waived. To the extent practicable and fair, supplemental proceedings shall be assigned to the workers' compensation judge who heard the original proceedings.

(b) Any conflict that may arise between presiding workers' compensation judges of different offices respecting assignment of a case, venue, or priority of hearing where there is conflict in calendar settings will be resolved by a deputy commissioner of the Appeals Board.

(c) If a compromise and release or stipulations with request for award have not been approved, disapproved, or noticed for trial on the issue of adequacy and other disputed issues within 45 days after filing, the file shall

be transferred to the presiding judge for review.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5309 and 5310, Labor Code.

§ 10347. Assignment of Judges. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5309 and 5310, Labor Code.

§ 10348. Authority of Workers' Compensation Judges.

In any case that has been regularly assigned to a workers' compensation judge, the judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case, including the fixing of the amount of the bond required in Labor Code section 3715. Orders, findings, decisions and awards issued by a workers' compensation judge shall be the orders, findings, decisions and awards of the Workers' Compensation Appeals Board unless reconsideration is granted. A workers' compensation judge or a deputy commissioner may issue writs or summons, warrants of attachment, warrants of commitment and all necessary process in proceedings for direct and hybrid contempt in a like manner and to the same extent as courts of record.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 121, 134, 5309 and 5310, Labor Code.

§ 10349. Orders Equivalent to Notices of Intention.

An order with a clause rendering the order null and void if an objection showing good cause is filed within ten (10) days shall be deemed equivalent to a ten (10) day notice of intention.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section !, Labor Code.

§ 10350. Trials: Appointment and Authority of Pro Tempore Workers' Compensation Judges.

A presiding workers' compensation judge may appoint and assign a pro tempore workers' compensation judge to conduct a trial on any issue in any proceeding before the Workers' Compensation Appeals Board and to make and file a finding, opinion, order, decision or award based thereon. Before assignment of a particular pro tempore workers' compensation judge, the parties or their representatives shall submit a request and written stipulation to the presiding workers' compensation judge. The request and written stipulation shall set out in full the name and the office address of the attorney agreed upon to conduct the trial as a pro tempore workers' compensation judge.

If a case is off calendar or has not before been set on the trial calendar, the request and written stipulation must be filed with a Declaration of Readiness to Proceed pursuant to Section 10414. The presiding workers' compensation judge, upon approval of the request for trial by a pro tempore workers' compensation judge, will assign the case to the trial calendar making appropriate arrangements to provide the pro tempore workers' compensation judge with facilities and staff at a time and place convenient to the Workers' Compensation Appeals Board and the pro tempore workers' compensation judge.

At the time of any conference hearing, the parties or their representatives may file the same request and written stipulation which will be submitted to the presiding workers' compensation judge who will assign the case to the trial calendar in the same manner as set forth above.

Pro tempore workers' compensation judges will have all the authority and powers of workers' compensation judges as set forth in the Labor Code and Rules of Practice and Procedure of the Workers' Compensation Appeals Board including inquiry into adequacy of and approval of compromise and release agreements and

stipulated findings including the authority to issue appropriate findings, awards and orders. Pro tempore workers' compensation judges shall be bound by the Rules of Practice and Procedure of the Workers' Compensation Appeals Board (including Articles 6, 7 and 8).

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 123.7, 5309 and 5310, Labor Code.

§ 10351. Conference Hearings: Appointment and Authority of Pro Tempore Workers' Compensation Judges.

A pro tempore workers' compensation judge shall in any case filed have the same power as a workers' compensation judge to conduct conference hearings, including mandatory settlement conferences, rating mandatory settlement conferences and status conferences; to inquire into the adequacy of and to approve compromise and release agreements; to approve stipulated findings and to issue appropriate awards based on the stipulations; to frame stipulations and issues and make interim and interlocutory orders at the conference hearing.

The presiding workers' compensation judge may assign a pro tempore workers' compensation judge to any conference hearing calendar including rating mandatory settlement conferences or status conferences. The name of the pro tempore workers' compensation judge shall appear on the notice of hearing. Failure to object to the assignment within five days of service of notice of conference hearing shall constitute a waiver of any objection to proceeding before the pro tempore workers' compensation judge assigned to the mandatory settlement conference hearing, rating mandatory settlement conference or status conference.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 123.7, 5309 and 5310, Labor Code.

§ 10352. Reconsideration of Pro Tempore Workers' Compensation Judge's Orders, Decisions or Awards.

Any final order, decision or award filed by a pro tempore workers' compensation judge shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 121, 123.7, 5309, 5310 and 5900-5911, Labor Code.

§ 10353. Settlement Conference Authority.

(a) In accordance with Labor Code section 5502, subdivision (e)(2), the workers' compensation judge shall have authority to inquire into the adequacy and completeness, including provision for lien claims, of compromise and release agreements or stipulations with request for award or orders, and to issue orders approving compromise and release agreements or awards or orders based upon approved stipulations. The workers' compensation judge may make orders and rulings regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute(s) by the workers' compensation judge, and may submit and decide the dispute(s) on the record pursuant to the agreement of the parties. The workers' compensation judge shall not hear sworn testimony at any conference.

(b) The workers' compensation judge may temporarily adjourn a conference to a time certain to facilitate a specific resolution of the dispute(s) subject to Labor Code section 5502, subdivision (e)(1).

Subject to the provisions of Labor Code Section 5502.5 and Rule 10416, upon a showing of good cause, the workers' compensation judge may continue a mandatory settlement conference to a date certain, may continue it to a status conference on a date certain, or may take the case off calendar. In such a case, the workers' compensation judge shall note the reasons for the continuance or order taking off calendar in the minutes. The minutes shall be served on all parties and lien claimants, and their representatives.

(c) Absent resolution of the dispute(s), the parties shall file at the mandatory settlement conference a joint pre-trial statement setting forth the issues and stipulations for trial, witnesses, exhibits, and the proposed permanent disability rating as provided by Labor Code Section 4065. The parties may modify their proposed ratings only when evidence, relevant to the proposed ratings, and disclosed or obtained after the mandatory settlement conference, becomes admissible pursuant to Labor Code Section 5502, subdivision (e)(3).

A summary of conference proceedings including the joint pre-trial conference statement and the disposition shall be filed by the workers' compensation judge in the record of the proceedings on a form prescribed and approved by the Appeals Board and shall be served on the parties.

Note: Authority cited: Sections 133, 5307 and 5502, Labor Code. Reference: Sections 5502 and 5502.5, Labor Code.

### **ARTICLE 3. PARTIES AND JOINDER**

#### **§ 10360. Necessary Parties.**

Any applicant other than the injured employee shall join the injured employee as a party. In such instances the Application for Adjudication shall include the injured employee's address if known or, if not known, a statement of that fact.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 126, 5307.5 and 5503, Labor Code.

#### **§ 10364. Parties Applicant.**

(a) Any person in whom any right to relief is alleged to exist may appear, or be joined, as an applicant in any case or controversy before the Workers' Compensation Appeals Board. A lien claimant may become a party where the applicant's case has been settled by way of a compromise and release, or where the applicant chooses not to proceed with his or her case.

(b) Any person against whom any right to relief is alleged to exist may be joined as a defendant.

(c) In death cases, all persons who may be dependents shall either join or be joined as applicants so that the entire liability of the employer or the insurer may be determined in one proceeding.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5300, 5303, 5307.5, 5500 and 5503, Labor Code.

#### **§ 10368. Parties Defendant.**

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5300, 5303, 5307.5, 5500 and 5503, Labor Code.

#### **§ 10372. Parties in Death Cases.**

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5300, 5303, 5307.5, 5500 and 5503, Labor Code.

#### **§ 10380. Joinder of Parties.**

After filing of an Application for Adjudication, the Appeals Board, a workers' compensation judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall be served with copies of the order of joinder, the application, minutes



of hearing and summary of evidence, medical reports and other documents, as directed in the order of joinder. The Workers' Compensation Appeals Board may designate the party or parties who are to make service.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5307.5 and 5316, Labor Code.

#### **ARTICLE 4. FILING OF DOCUMENTS**

§ 10390. Place and Time of Filing Documents. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§ 10391. Filing of Copies of Documents. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§ 10392. Form and Size Requirements for Filed Documents. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§ 10395. Improper Filing of Documents. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§ 10396. Duty to Furnish Correct Address. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§ 10397. Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation.

(a) An application for adjudication of claim, a petition for reconsideration, a petition to reopen, or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:

(1) the document is not filed in the proper office of the Workers' Compensation Appeals Board;

(2) the document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or

(3) the document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.

(b) A document that is subject to a statute of limitations or a jurisdictional time limitation may be rejected for filing if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file. If a document is rejected in accordance with this subdivision, the Court Administrator shall return the document to the filer and shall notify the filer, through the service of a Notice of Document Discrepancy, that the document has not been accepted for filing. The Notice of Document Discrepancy shall specify the nature of the discrepancy(ies) and the date of the attempted filing, and it shall state that the filer shall have 15 days from

the service of the Notice within which to correct the discrepancy(ies) and resubmit the document for filing. If the document is corrected and resubmitted for filing within 15 days, or at a later date upon a showing of good cause, it shall be deemed filed as of the original date the document was submitted.

(d) Nothing in this section shall preclude the discretionary or conditional acceptance for filing of a document that is subject to a statute of limitations or a jurisdictional time limitation, even if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file.

(e) Where document that it is subject to a statute of limitations or a jurisdictional time limitation has been accepted for filing in accordance with this rule, but the document nevertheless cannot be processed by EAMS, the Court Administrator may serve a copy of the filed document on the filing party or lien claimant, together with a Notice of Document Discrepancy. The notice may specify the nature of the discrepancy(ies) and request that the party correct the discrepancy(ies) within 15 days after service of the Notice, however, a failure to timely correct the discrepancy(ies) shall not nullify the acceptance of the document for filing.

(f) Nothing in this section shall be deemed to excuse non-compliance with any of other provisions of the rules of the Workers' Compensation Appeals Board or non-compliance with the rules the Court Administrator. Any such non-compliance may still be a basis for the imposition of sanctions under Labor Code section 5813 and Rule 10561.

Note: Authority cited: Article XIV, Section 4, California Constitution; Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126, 5316, 5500 and 5501, Labor Code.

## **ARTICLE 5. PLEADINGS**

### § 10400. Filing and Service of Applications.

(a) Except as provided by sections 10865 and 10953, proceedings for the adjudication of rights and liabilities before the Workers' Compensation Appeals Board shall be initiated by the filing of an Application for Adjudication, a case opening Compromise and Release Agreement, a case opening Stipulations with Request for Award, or a Request for Findings of Fact under section 10405.

(b) A case opening Compromise and Release Agreement, a case opening Stipulations with Request for Award, and a Request for Findings of Fact under section 10405 are each an "application" for purposes of invoking the jurisdiction of the Workers' Compensation Appeals Board, but none of these documents shall be deemed an application for purposes of Labor Code section 4064(c).

(c) Upon the filing of an initial application, the application shall be assigned an adjudication case number and a venue.

(d) When filing an amended application, the applicant shall indicate on the box set forth on the application form that it is an "amended" application.

(e) Upon filing an Application for Adjudication, the filing party or lien claimant shall concurrently serve a copy of the application and any accompanying documents on all other parties and lien claimants.

(f) If the party filing the application is an unrepresented injured employee, an unrepresented dependent of a deceased employee, or a lien claimant or non-attorney representative of a lien claimant who falls within one of the exceptions of section 10228, subdivisions (c)(5)(A) through (c)(5)(C), the Workers' Compensation Appeals Board:

(1) shall serve a conformed copy of the application on all parties and lien claimants, including the filing applicant, who are listed on either on the application, on the proof of service to the application, or on the address record (if an address record was previously created for an earlier application); and

(2) if it is an initial application, shall concurrently give notification of the assigned adjudication case number and venue.

Such service shall be deemed service of a conformed copy of the application for purposes of Labor Code section 5501.

(g) For all other parties and lien claimants, the Workers' Compensation Appeals Board:

(1) shall serve a conformed copy of the application on the filing party or lien claimant (or, if represented, on the filing party or lien claimant's attorney or other representative); and

(2) if it is an initial application, shall concurrently give notification of the assigned adjudication case number and venue.

Upon receipt of the conformed copy of the application, the filing party or lien claimant (or, if represented, the filing party or lien claimant's attorney or other representative) shall forthwith serve a copy of the conformed application on all other parties and lien claimants who are listed on the application or on the proof of service to the application, and, if it is an initial application, shall concurrently notify all other parties and lien claimants of the assigned adjudication case number and venue.

Such service shall be deemed service of a conformed copy of the application for purposes of Labor Code section 5501.

(h) Disclosure of the applicant's Social Security number is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although an applicant is not required by law to provide a Social Security number, he or she is encouraged to do so. Social Security numbers are used solely for identification and verification purposes in order to administer the workers' compensation system. A Social Security number will not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126, 5316, 5500 and 5501, Labor Code.

#### § 10401. Separate Application for Each Injury.

A separate Application for Adjudication shall be filed for each separate injury for which benefits are claimed even though the employer is the same in each case. Separate pleadings shall be filed in each case.

All claims of all persons arising out of the same injury to the same employee shall be filed in the same proceeding.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 3208.2 and 5500, Labor Code.

#### § 10402. Minors, Incompetents as Applicants.

If the Applicant is a minor or incompetent, the Application for Adjudication shall be accompanied by a Petition for Appointment of a Guardian ad Litem and Trustee. In those instances where the minor has the right of nomination, the nomination shall be included in the petition.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5307.5 and 5500, Labor Code.

#### § 10403. Application Required Before Jurisdiction Invoked and Before Compelled Discovery May Be Commenced.

The jurisdiction of the Workers' Compensation Appeals Board is invoked only by the filing of an initial Application for Adjudication of Claim or other case opening document. The pre-application assignment of a non-adjudication EAMS case number by any ancillary unit of the Division of Workers' Compensation (e.g., the Disability Evaluation Unit, the Information and Assistance Office, the Rehabilitation Unit, or the Retraining and Return to Work Unit):

(a) does not establish the jurisdiction of the Workers' Compensation Appeals Board and, therefore, does not permit it to conduct any hearings or to issue any orders;

(b) does not toll the statute of limitations (except as provided in Labor Code section 5454 for submissions to the Information and Assistance Unit); and

(c) does not authorize the commencement of formal, compelled discovery.

Nothing in this section shall be construed to preclude any non-compelled pre-application medical evaluations or investigations.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5300, 5301 and 5500, Labor Code.

#### § 10404. Labor Code Section 4906(g) Statement.

The employee, insurer, employer and the attorneys for each party shall comply with Labor Code Section 4906(g) by filing a statement under penalty of perjury wherein it is declared that the party on whose behalf the declaration is made has not violated Labor Code Section 139.3, has not offered, delivered, received, or accepted any unlawful rebate, refund, commission, preference, patronage dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for any referred examination or evaluation by a physician. Except as otherwise provided herein, failure to comply with this rule shall result in refusal to file or process that party's application for adjudication or answer. If any of the above parties are not available, cannot be located or are unwilling to sign a declaration under penalty of perjury setting forth in specific detail the reasons that the party is not available, cannot be located or is unwilling to sign as well as good faith efforts to locate the party may be filed with the application or answer. If the presiding workers' compensation judge or designee determines from the facts set forth in the declaration that good cause has been established, he or she may accept the application or answer for filing. For the purpose of this rule, a compromise and release agreement or stipulations with request for award shall not be treated as an application for adjudication.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4906(g), Labor Code.

#### § 10405. Request for Findings of Fact.

A request for findings of fact under Government Code Sections 21164, 21166, 21537, 21538, 21540, or 21540.5 or under Labor Code Sections 4800.5(d), 4801, 4804.2, 4807 or 4851 is a proceeding separate from a claim for workers' compensation benefits even though it arises out of the same incident, injury or exposure. The request for findings of fact shall be filed separately and a separate file folder and record of the proceeding will be maintained, but the request for findings of fact may be consolidated for hearing with a claim for workers' compensation benefits under the provisions of Section 10590 of these Rules.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 21164, 21166, 21537, 21538, 21540 and 21540.5, Government Code; Sections 4800.5(d), 4801, 4804.2, 4807 and 4851, Labor Code.

#### § 10406. Pre-Application and Miscellaneous Proceedings.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 132a, 4553, 4751 and 5401, Labor Code.

§ 10407. Dismissal of Claim Form -Labor Code Section 5404.5.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5404.5, Labor Code.

§ 10408. Forms of Application.

The Application for Adjudication for compensation benefits and death benefits shall be on forms prescribed and approved by the Appeals Board.

Venue shall be at the district office where the Application for Adjudication is filed pursuant to Labor Code Section 5501.5.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5500 and 5501.5, Labor Code.

§ 10409. Venue.

(a) The person or entity filing an initial Application for Adjudication (or other case opening document) shall designate venue and shall specify whether venue is based upon: (1) the place of the employee or dependent's residence at the time of filing (Lab. Code, § 5501.5(a)(1) or (d)); (2) the place where the injury allegedly occurred or, for cumulative trauma or industrial disease claims, where the last alleged injurious exposure occurred (Lab. Code, § 5501.5(a)(2) or (d)); or (3) the place where the employee's attorney maintains his or her principal place of business (Lab. Code, § 5501.5(a)(3)).

(b) When a Division of Workers' Compensation employee files his or her own Application for Adjudication of Claim or other case opening document, the following provisions shall apply:

(1) Regardless of the venue designated by the employee, venue shall be determined as follows:

(A) The parties may agree on a venue, subject to the approval of the presiding workers' compensation judge of the agreed-upon venue;.

(B) If the parties are unable to agree on a suitable venue, or for any other good cause shown, the presiding workers' compensation judge of the district office designated on the application or other case opening document shall consult with the Secretary or other Deputy Commissioner of the Appeals Board to determine the appropriate venue, with the Secretary or other Deputy Commissioner issuing the appropriate venue order.

(2) The Secretary or other Deputy Commissioner of the Appeals Board shall assign the case to a workers' compensation judge unfamiliar with the employee. When appropriate, a workers' compensation judge from a region other than the employee's region shall be assigned.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5500 and 5501.5, Labor Code.

§ 10410. Objection to Venue Under Labor Code Section 5501.5(c).

Pursuant to Labor Code section 5501.5(c), any employer or insurance carrier listed on an initial Application for Adjudication may file an objection to a venue selection, based on the employee's attorney's principal place of business under Labor Code section 5501.5(a)(3), within 30 days after notice of the adjudication case number and venue is received by the employer or insurance carrier. The objecting employer or insurance carrier shall

state under penalty of perjury the date when the notice of the adjudication case number and venue was received.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5501.5, Labor Code.

§ 10411. Petition for Change of Venue Under Labor Code Section 5501.6.

A petition for change of venue pursuant to Labor Code section 5501.6 shall be filed at the district office with venue. Any objection to a petition for a change of venue shall be filed within 10 days of the filing of the petition. The presiding judge of the district office having venue, or his or her designee, shall grant or deny the petition for change of venue, or serve notice of a status conference concerning the petition, within 30 days of the filing of the petition.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5501.6, Labor Code.

§ 10412. Proceedings and Decisions After Venue Change.

When an order changing venue is issued, all further trial level proceedings shall be conducted at, and all further trial level orders, decisions, and awards shall be issued by, the district office to which venue was changed until another order changing venue is issued.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126 and 5501.6, Labor Code.

§ 10414. Declaration of Readiness to Proceed. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 134, 5502 and 5813, Labor Code.

§ 10415. Declaration of Readiness to Proceed to Expedited Hearing. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5502(b), Labor Code.

§ 10416. Objection to Declaration of Readiness to Proceed. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 134 and 5813, Labor Code.

§ 10417. Walk-Through Calendar Setting. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316 and 5502, Labor Code.

§ 10418. Letters of Appointment for Medical Examinations.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5401 and 5703, Labor Code.

§ 10420. Setting the Case.

The Workers' Compensation Appeals Board, upon the receipt of a Declaration of Readiness to Proceed, may, in

its discretion, set the case for a type of proceeding other than that requested. The Workers' Compensation Appeals Board may on its own motion set any case for conference or trial.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5310, Labor Code.

§ 10430. Letters of Appointment for Medical Examinations.

After the filing of an Application for Adjudication, each party will notify all other parties, and their attorneys or representatives, of any medical appointment scheduled for the purposes of medical-legal evaluation. That notice shall be given at the same time the injured worker is advised of the appointment.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5401 and 5703, Labor Code.

§ 10440. Pleadings -Serious and Willful Misconduct.

All allegations that an injury was caused by either the serious and willful misconduct of the employee or of the employer must be separately pleaded and must set out in sufficient detail the specific basis upon which the charge is founded so that the adverse parties and the Workers' Compensation Appeals Board may be fully advised.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4550, 4551, 4552, 4553, 4553.1, Labor Code.

§ 10445. Allegations.

All allegations that an injury was caused by serious and willful misconduct shall:

(a) When the charge of serious and willful misconduct is based on more than one theory, set forth each theory separately.

(b) Whenever the charge of serious and willful misconduct is predicated upon the violation of a particular safety order, set forth the correct citation or reference and all of the particulars required by Labor Code Section 4553.1.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4550, 4551, 4552, 4553, 4553.1, Labor Code.

§ 10447. Pleadings -Discrimination.

Any person seeking to initiate proceedings under Labor Code Section 132a other than prosecution for misdemeanor must file a petition therefor setting forth specifically and in detail the nature of each violation alleged and facts relied on to show the same, and the relief sought. Each alleged violation must be separately pleaded so that the adverse party or parties and the Workers' Compensation Appeals Board may be fully advised of the specific basis upon which the charge is founded.

The Workers' Compensation Appeals Board may refer, or any worker may complain of, suspected violations of the criminal misdemeanor provisions of Labor Code Section 132a to the Division of Labor Standards Enforcement or directly to the Office of the Public Prosecutor.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 132a, Labor Code.

§ 10450. Petitions.

(a) A request for action by the Workers' Compensation Appeals Board, other than an Application for Adjudication, an Answer, or a Declaration of Readiness, shall be made by petition. The caption of each petition

shall contain the case title and adjudication case number and shall indicate the type of relief sought.

(b) Any previously filed document shall not be attached to a petition; any such document that is attached to a petition may be discarded.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 126, Labor Code.

§ 10452. Petition for Disqualification of Judge.

Proceedings to disqualify a workers' compensation judge under Labor Code Section 5311 shall be initiated by the filing of a petition for disqualification supported by an affidavit or declaration under penalty of perjury stating in detail facts establishing grounds for disqualification of the workers' compensation judge to whom a case or proceeding has been assigned.

If the workers' compensation judge assigned to hear the matter and the grounds for disqualification are known, the petition for disqualification shall be filed not more than 10 days after service of notice of hearing. In no event shall any such petition be allowed after the swearing of the first witness.

A petition for disqualification shall be referred to and determined by a panel of three commissioners of the Appeals Board in the same manner as a petition for reconsideration.

Note: Authority cited: Section 5307, Labor Code. Reference: Sections 5310, 5311, Labor Code.

§ 10453. Petition for Automatic Reassignment of Trial or Expedited Hearing to Another Workers' Compensation Judge.

A party shall be entitled to automatic reassignment of a trial or expedited hearing to another workers' compensation judge in accordance with the provisions of this section. An injured worker shall be entitled to one reassignment of a judge for trial or expedited hearing. If the injured worker has not exercised the right to automatic reassignment and one or more lien claimants have become parties and no testimony has been taken, the lien claimants shall be entitled to one reassignment of judge for a trial, which may be exercised by any of them. The defendants shall be entitled to one reassignment of judge for a trial or expedited hearing, which may be exercised by any of them.

If the parties are first notified of the identity of the workers' compensation judge assigned for trial or expedited hearing by a notice of trial served by mail, to exercise the right to automatic reassignment a party must file a petition requesting reassignment not more than five (5) days after the service of the notice of trial or expedited hearing. The presiding judge or a person designated by the presiding judge shall rule on any petition for automatic reassignment. If a petition for automatic reassignment is granted, a new notice of trial or expedited hearing shall be served.

If the parties are first notified of the identity of the workers' compensation judge assigned for trial at a mandatory settlement conference, at a status conference, at a lien conference, at a priority conference, or upon reassignment at the time of trial, to exercise the right to automatic reassignment a party must make an oral motion immediately upon learning the name of the judge to whom the case has been assigned for trial. The motion shall be acted upon immediately by the presiding workers' compensation judge or a person designated by the presiding judge.

In no event shall any motion or petition for reassignment be entertained after the swearing of the first witness at a trial or expedited hearing.

If a party files a petition or makes a motion for automatic reassignment and no other workers' compensation judge is available in the office, the assignment shall be made by a deputy commissioner of the Appeals Board.

Unless required for the convenience of the Workers' Compensation Appeals Board, no continuance shall be granted by reason of a petition or motion under this section. If a continuance is granted, another trial or expedited hearing shall be scheduled as early as possible.



Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to conference hearings.

Note: Authority cited: Section 5307, Labor Code. Reference: Section 5310, Labor Code.

§ 10454. Automatic Reassignment After Reversal.

Notwithstanding Rule 10453, where the Appeals Board reverses a decision of a workers' compensation judge on an issue of the statute of limitations, jurisdiction, employment, or injury arising out of and in the course of employment, and remands the case for further proceedings, the party who filed the petition for reconsideration that resulted in the reversal shall be entitled to automatic reassignment of the case to another workers' compensation judge upon a motion or petition requesting reassignment filed at the district office within 30 days after the decision of the Appeals Board becomes final.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5310, Labor Code.

§ 10455. Petition to Reopen.

Petitions invoking the continuing jurisdiction of the Workers' Compensation Appeals Board under Labor Code Section 5803 shall set forth specifically and in detail the facts relied upon to establish good cause for reopening.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5803, Labor Code.

§ 10458. Petition for New and Further Disability.

The jurisdiction of the Workers' Compensation Appeals Board under Labor Code Section 5410 shall be invoked by a petition setting forth specifically and in detail the facts relied upon to establish new and further disability. If no prior Application for Adjudication has been filed, jurisdiction shall be invoked by the filing of an original Application for Adjudication.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5803, Labor Code.

§ 10462. Petition to Terminate Liability; Filing.

A petition to terminate liability for continuing temporary disability indemnity under a findings and award, decision or order of the Appeals Board or a workers' compensation judge shall be filed within 10 days of the termination of the payments or other compensation. Failure to file such a petition within 10 days may affect the right to credit for an overpayment of temporary disability indemnity.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4650, 4651.1, Labor Code.

§ 10464. Contents of Petition to Terminate Liability.

A petition to terminate liability for temporary total disability indemnity shall conform substantially to the form provided by the Appeals Board and shall include:

(a) the correct title and date of filing of the prior order or decision, liability under which is sought to be terminated;

(b) the date upon which it is claimed that liability terminated;

(c) the grounds upon which it is claimed liability should be terminated;

(d) whether permanent disability is being advanced and, if so, the approximate date to which such indemnity will be paid;

(e) whether the employee is presently working, according to information available to the petitioner;

(f) a computer printout showing the dates and the amounts of disability indemnity that have been paid, and the periods covered shall be attached; and

(g) proof of service upon the opposing parties.

All medical reports in the possession of the petitioner that have not previously been served and filed shall accompany the petition. The petition also shall contain a statement, in underlined capital letters, that an order terminating liability for temporary total disability indemnity may issue unless objection thereto is made on behalf of the employee within 14 days after service of the petition.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4650, 4651.1, Labor Code.

#### § 10466. Objections to Petition, Hearing, Interim Order.

If written objection to the petition to terminate is not received within fourteen (14) days of its proper filing and service, the Workers' Compensation Appeals Board may order temporary disability compensation terminated, in accordance with the facts as stated in the petition or in such other manner as may appear appropriate on the record. If the petition to terminate is not properly completed or executed in accordance with Section 10464, the Workers' Compensation Appeals Board may summarily deny or dismiss the petition. Objection to the petition by the employee shall be filed in writing within fourteen (14) days of service of the petition, and shall state the facts in support of the employee's contention that the petition should be denied, and shall be accompanied by a Declaration of Readiness to Proceed to Expedited Hearing. All supporting medical reports shall be attached to the objection. The objection shall also show that service of the objection and the reports attached thereto has been made upon petitioner or counsel.

Upon the filing of a timely objection, where it appears that the employee is not or may not be working and is not or may not be receiving disability indemnity, the petition to terminate shall be set for expedited hearing not less than ten (10) nor more than thirty (30) days from the date of the receipt of the objection.

If complete disposition of the petition to terminate cannot be made at the hearing, the workers' compensation judge assigned thereto, based on the record, including the allegations of the petition, the objection thereto, and the evidence (if any) at said hearing, shall forthwith issue an interim order directing whether temporary disability indemnity shall or shall not continue during the pendency of proceedings on the petition to terminate. Said interim order shall not be considered a final order, and will not preclude a complete adjudication of the petition to terminate or the issue of temporary disability or any other issue after full hearing of the issues.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4650 and 4651.1, Labor Code.

#### § 10470. Medical Reports.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5703, 5401, 5270 and 5277, Labor Code.

#### § 10480. Answers.

An Answer to each Application for Adjudication shall be filed and served ten (10) days after service of the Declaration of Readiness to Proceed required by rule 10414 or 10415.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5500, Labor Code.

§ 10484. Procedural Requirement.

The Answer used by the parties shall conform to a form prescribed and approved by the Appeals Board. Additional matters may be pleaded as deemed necessary by the answering party. A general denial is not an answer within this rule. The Answer shall be accompanied by a proof of service upon the opposing parties.

Evidence upon matters and affirmative defenses not pleaded by Answer will be allowed only upon such terms and conditions as the Appeals Board or workers' compensation judge may impose in the exercise of sound discretion.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5500, 5505, Labor Code.

§ 10488. Form of Answer.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Sections 5500, 5505, Labor Code.

§ 10490. Demurrer, Judgment on the Pleadings, and Summary Judgment Not Permitted; Unintelligible Pleadings.

Demurrers, petitions for judgment on the pleadings, and petitions for summary judgment are not permitted. A continuance may be granted upon timely request and upon such terms as may be reasonable under the circumstances or may be ordered by the Workers' Compensation Appeals Board on its own motion if:

(a) a pleading is so uncertain, unintelligible or ambiguous as to render it impossible for the Workers' Compensation Appeals Board to understand or act upon it; or

(b) any party is prejudiced by omission or ambiguity of necessary allegations sufficient to prevent that party from adequately presenting a cause of action or defense.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5500 and 5708, Labor Code.

§ 10492. When Pleadings Deemed Amended.

The pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record. Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Section 5702, Labor Code.

§ 10496. Awards and Orders Without Hearing.

Awards and orders may be based upon stipulations of parties in open court or upon written stipulation signed by the parties.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Section 5702, Labor Code.

§ 10497. Rejection of Stipulations.

No finding shall be made contrary to a stipulation of the parties on an issue without giving the parties notice

and an opportunity to present evidence thereon.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Section 5702, Labor Code.

#### **ARTICLE 6. SERVICE**

##### **§ 10500. Service by the Workers' Compensation Appeals Board.**

(a) Except as provided in subdivision (b) below, the Workers' Compensation Appeals Board may, in its discretion, designate a party or lien claimant, or their attorney or agent of record, to make service of notices of the time and place of hearing, orders approving compromise and release, awards based upon stipulations with request for award and any interim or procedural orders. In deciding whether to exercise this discretion, the Workers' Compensation Appeals Board may consider whether service by it would be more efficient and cost-effective because most or all of the parties, lien claimants, attorneys, or agents of record to be served have specified e-mail or fax as their preferred method of service. If discretion is exercised so as to require designated service, the party, lien claimant, or attorney or agent of record designated to make service shall retain the proof of service and shall not file it unless ordered to do so by the Workers' Compensation Appeals Board.

(b) The Workers' Compensation Appeals Board shall serve all parties and lien claimants of record notice of any final order, decision, or award issued by it on a disputed issue after submission. The Workers' Compensation Appeals Board shall not designate a party or lien claimant, or their attorney or agent of record, to serve any final order, decision, or award relating to a submitted disputed issue.

(c) If the Workers' Compensation Appeals Board effects personal service of a document at a hearing or at a walk-through proceeding, the proof of personal service shall be made by endorsement on the document, setting forth the fact of personal service, the name(s) of the person(s) served and the date of service. The endorsement shall bear the signature of the person making the service.

(d) If the Workers' Compensation Appeals Board serves a document by mail, the proof of mail service shall be made by endorsement on the document, setting forth the fact of mail service on the persons or entities listed on the official address record who have not designated e-mail or fax as their preferred method of service. The endorsement shall state the date of mail service and it shall bear the signature of the person making the service.

(e) If the Workers' Compensation Appeals Board electronically serves a document through EAMS on persons or entities listed on the official address record who have designated e-mail or fax as their preferred method of service, the record of electronic service maintained in EAMS shall constitute proof of service on such persons or entities by the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5316 and 5504, Labor Code.

##### **§ 10501. Service in Death Cases.**

When an Application for Adjudication, stipulations with request for award or compromise and release is filed in a death case in which there is a bona fide issue as to partial or total dependency, the filing party shall serve copies of the documents on the Department of Industrial Relations, Death Without Dependents Unit.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4706.5, Labor Code.

##### **§ 10505. Service by the Parties or Lien Claimants.**

(a) This section shall apply when a document is served by a party, a lien claimant, or their attorney or other agent of record.

(b) Except when a document is personally served, service of any document shall be made by first-class mail or by an alternative method that will effect service that is equivalent to or more expeditious than first-class mail, unless:

(1) the party, lien claimant, attorney, or agent being served has previously specified that a designated preferred method of service other than first-class mail may be used for any service, consistent with section 10218; or

(2) the serving party, lien claimant, attorney, or agent and the receiving party, lien claimant, attorney, or agent previously agreed to some other method of service.

For purposes of this subsection, "an alternative method that will effect service that is equivalent to or more expeditious than first-class mail" shall be limited to either: (i) use of express (overnight) or priority mail; or (ii) use of a bona fide commercial delivery service or attorney service promising delivery within two business days, as shown on the service's invoice or receipt.

(c) If a document is personally served by a party or lien claimant, the proof of personal service shall be made by endorsement on the document, setting forth the fact of personal service, the name(s) of the person(s) served and the date of service. The endorsement shall bear the signature of the person making the service.

(d) If a document is served by a party or lien claimant by mail on persons listed on the official address record who have designated mail as their preferred method of service, who have failed to make any designation, or who have previously agreed to accept mail service in accordance with subdivision (g), the proof of mail service may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by the party making the statement; or (3) letter of transmittal. The proof of service shall set forth the names and addresses of persons served, the fact of service by mail, the date of service, and the address(es) to which mailing was made.

(e) If a document is served by a party or lien claimant by e-mail on persons listed on the official address record who have designated e-mail as their preferred method of service, or who have previously agreed to accept e-mail service in accordance with subdivision (g), the proof of e-mail service must state:

(1) the e-mail address of the person making the e-mail service;

(2) the date of the e-mail service;

(3) the name(s) and e-mail address(es) of the person(s) served; and

(4) that the document was served by e-mail and that there was no report of any error or delay in the transmission of the e-mail.

Absent evidence to the contrary, service by e-mail shall be deemed complete at the time of transmission, unless a document is re-served in accordance with subdivision (h).

(f) If a document is served by a party or lien claimant by fax on persons listed on the official address record who have designated fax as their preferred method of service, or who have previously agreed to accept fax service in accordance with subdivision (g), the proof of fax service must state:

(1) the sending fax machine telephone number of the person making the fax service;

(2) the date and time of the fax service;

(3) the name and the fax machine telephone number of the person served; and

(4) that the document was served fax transmission and the transmission was reported as complete and without error.

Absent evidence to the contrary, service by fax shall be deemed complete at the time of transmission, unless a document is re-served in accordance with subdivision (h).

(g) By prior agreement of the parties or lien claimants, or where authorized or requested by the receiving party or lien claimant, service of any document may be made by methods other than the designated preferred method of service.

(h) This subdivision shall apply where, after serving a document in accordance with subdivisions (d), (e), (f), and/or (g), the serving party or lien claimant (or their attorney or agent of record) subsequently receives notification that the service to one or more parties or lien claimants (or to their attorneys or agents of record) failed.

(1) When the serving party or lien claimant (or their attorney or agent of record) receives notification of failed service to any intended recipient(s), the server shall promptly re-serve the document on the intended recipient(s) using the method of service (i.e., mail, e-mail, fax) best calculated to result in valid service on the intended recipient(s), even if the intended recipient(s) did not previously designate that method as their preferred method of service.

(2) The server need not re-serve the document on intended recipients for whom the server did not receive notification of failed service.

(3) On re-service, the server shall execute a new proof of service in accordance with subdivisions (c), (d), (e), and/or (f), showing re-service on the intended recipient(s).

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5316, Labor Code.

#### § 10506. Service: Mailbox.

Where a district office of the Workers' Compensation Appeals Board maintains mailboxes for outgoing documents and allows consenting parties, lien claimants, and attorneys to obtain their documents from their mailboxes, documents so obtained shall be deemed to have been served on the party, lien claimant, or attorney by mail on the date of service specified on the document.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

#### § 10507. Time Within Which to Act When a Document is Served by Mail, Fax, or E-Mail.

(a) If a document is served by mail, fax, e-mail, or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by:

(1) five calendar days from the date of service, if the physical address of the party, lien claimant, attorney, or other agent of record being served is within California;

(2) ten calendar days from the date of service, if the physical address of the party, lien claimant, attorney, or other agent of record being served is outside of California but within the United States; and

(3) twenty calendar days from the date of service, if the physical address of the party, lien claimant, attorney, or other agent of record being served is outside the United States.

(b) For purposes of this section, "physical address" means the street address or Post Office Box of the party, lien claimant, attorney, or other agent of record being served, as reflected in the Official Address Record at the time of service, even if the method of service actually used was fax, e-mail, or other agreed-upon method of service.

(c) This rule applies whether service is made by the Workers' Compensation Appeals Board, a party, a lien claimant, or an attorney or other agent of record.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5316, Labor Code.

§ 10508. Extension of Time for Weekends and Holidays.

If the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5316, Labor Code; Sections 6700, 6701 and 6707, Government Code; and Sections 10, 12, 12a, 12b, 13 and 135, Code of Civil Procedure.

§ 10510. Service on Represented Employees or Dependents and on Attorneys or Agents.

(a) All orders, decisions, findings, awards, minutes of hearing, notices of hearing, correspondence, and any other documents issued by the Workers' Compensation Appeals Board, including those being served by designated service in accordance with section 10500, shall be served on:

(1) the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented by an attorney or other agent of record;

(2) each attorney or other agent of record of the injured employee or any dependent(s) of a deceased employee; and

(3) each attorney or other agent of record for any other affected party or affected lien claimant, unless that party or lien claimant is unrepresented, in which event service shall be made directly on the party or lien claimant.

(b) Except for designated service under section 10500 or as otherwise provided by these rules, service by any party or lien claimant shall be made on the attorney(s) or agent(s) of record of each other affected party or affected lien claimant, unless that party or lien claimant is unrepresented, in which event service shall be made directly on the party or lien claimant. Except as provided in section 10500, or as otherwise ordered by a workers' compensation judge or the Appeals Board, no party or lien claimant shall be required to serve any document on the injured employee or any dependent(s) of a deceased employee, if the employee or dependent is represented by an attorney or other agent of record.

(c) Nothing in this rule shall preclude more comprehensive service, either as ordered by the Workers' Compensation Appeals Board or in the discretion of the Workers' Compensation Appeals Board or the parties.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5316, Labor Code.

§ 10514. Proof of Service by Parties and Lien Claimants. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

§ 10520. Proof of Service by Workers' Compensation Appeals Board. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

#### **ARTICLE 7. SUBPOENAS**

##### § 10530. Subpoenas.

The Workers' Compensation Appeals Board shall issue subpoenas and subpoenas duces tecum upon request in accordance with the provisions of Code of Civil Procedure sections 1985 and 1987.5 and Government Code section 68097.1. Subpoenas and subpoenas duces tecum shall be on forms prescribed and approved by the Appeals Board, and for injuries occurring on or after January 1, 1990, shall contain, in addition to the requirements of Code of Civil Procedure 1985, an affidavit that a claim form has been duly filed pursuant to Labor Code section 5401, subdivision (c).

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 130 and 5401, Labor Code; Sections 1085, 1087.5, Code of Civil Procedure; and Section 68097.1, Government Code.

##### § 10532. Notice to Appear or Produce.

A notice to appear or produce in accordance with Code of Civil Procedure Section 1987 is permissible in proceedings before the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Section 132, Labor Code.

##### § 10534. Microfilm.

Where records or other documentary evidence have been recorded or reproduced using the methods described in Section 1551 of the Evidence Code and the original records destroyed, the film, legible print thereof or electronic recording shall be produced in response to a subpoena duces tecum. A party offering a film or electronic recording in evidence may be required to provide legible prints thereof or reproductions from the electronic recording.

The expense of:

- (a) inspecting reproductions shall be paid by the party making the inspection; and
- (b) obtaining microfilm prints shall be borne by the party requiring the same.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 130, Labor Code.

##### § 10536. Witness Fees and Subpoenas.

Medical examiners appointed by the Workers' Compensation Appeals Board or agreed to by the parties when subpoenaed for cross-examination at the Workers' Compensation Appeals Board or deposition shall be paid by the party requiring the attendance of the witness in accordance with the Rules of the Administrative Director. Failure to serve the subpoena and tender the fee in advance based on the estimated time of the trial or deposition may be treated by the Workers' Compensation Appeals Board as a waiver of the right to examine the witness. Service and payment of the fee may be made by mail if the witness so agrees.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 130, 131, 4621 and 5710, Labor Code; and Section 2034(i)(2), Code of Civil Procedure.

##### § 10537. Subpoena for Medical Witness.

A subpoena requiring the appearance of a medical witness before the Workers' Compensation Appeals Board must be served not less than ten (10) days before the time the witness is required to appear and testify.



Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Section 132, Labor Code.

#### ARTICLE 8. HEARINGS

##### § 10541. Submission at Conference.

(a) A workers' compensation judge may receive evidence and submit an issue or issues for decision at a conference hearing if the parties so agree.

(b) If documentary evidence is required to determine the issue or issues being submitted, the parties shall comply with the provisions of Rule 10629 regarding the listing and filing of exhibits.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5708 and 5709, Labor Code.

##### § 10544. Notice of Hearing.

The Workers' Compensation Appeals Board shall serve or cause to be served notice of the time and place of hearings on all parties and lien claimants, and their attorneys or other agents of record, as provided in Rule 10500.

Notice of hearing shall be given at least ten (10) days before the date of hearing, except where:

(a) notice is waived;

(b) a different time is expressly agreed to by all parties and concurred in by the Workers' Compensation Appeals Board; or

(c) the proceedings are governed by Article 19 pertaining to claims against the Subsequent Injuries Fund.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5504, Labor Code.

##### § 10548. Continuances; Appearances in Settled Cases. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Section 5502.5, Labor Code.

##### § 10550. Proper Identification of the Parties and Lien Claimants.

Whenever any party or lien claimant (or any attorney or other representative for a party or lien claimant) either (i) files any Application for Adjudication, Answer, stipulated Findings and Award, Compromise and Release, lien claim, petition or other pleading with the Workers' Compensation Appeals Board or (ii) states its appearance on the record at any hearing before the Workers' Compensation Appeals Board (including but not limited to stating its appearance on any pretrial conference statement, appearance sheet, or minutes of hearing), the party or lien claimant, or its attorney or other representative, shall comply with the following requirements:

(a) each party or lien claimant shall set forth its full legal name, and each attorney or other representative shall set forth the full legal name(s) of the party or parties he, she, or it is representing;

(b) if an adjusting agent or third-party claims administrator is appearing, it shall disclose: (1) whether it is appearing on behalf of an employer, an insurance carrier, or both; (2) the identity or identities of the party or parties it is representing; and (3) if it is representing an insurance carrier, whether the policy includes a high self-insured retention, a large deductible, or any other provision that affects the identity of the entity or entities actually liable for the payment of compensation;

(c) if an insurance carrier is appearing, it shall disclose: (1) whether it is appearing solely on its behalf, or also

on behalf the insured employer; and (2) whether its policy includes a high self-insured retention, a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation; and

(d) if a lien claim is being filed or amended, or if a lien claimant is appearing, the lien claimant shall state whether it is the original owner of the alleged debt or whether it has purchased the alleged debt from the original owner or some subsequent purchaser.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 3755-3759, 4903.1(c), 5001, 5002, 5003, 5004, 5500, 5502, 5503, 5505, 5702 and 5709, Labor Code.

§ 10555. Priority Conference Calendar. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5502(c), Labor Code.

§ 10560. Submission at Single Trial.

The parties are expected to submit for decision all matters properly in issue at a single trial and to produce at the trial all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense. However, a workers' compensation judge may order that the issues in a case be bifurcated and tried separately upon a showing of good cause.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Section 5708, Labor Code.

§ 10561. Sanctions.

(a) On its own motion or upon the filing of a petition pursuant to Rule 10450, the Workers' Compensation Appeals Board may order payment of reasonable expenses, including attorney's fees and costs and, in addition, sanctions as provided in Labor Code section 5813. Before issuing such an order, the alleged offending party or attorney must be given notice and an opportunity to be heard. In no event shall the Workers' Compensation Appeals Board impose a monetary sanction pursuant to Labor Code section 5813 where the one subject to the sanction acted with reasonable justification or other circumstances make imposition of the sanction unjust.

(b) Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. Violations subject to the provisions of Labor Code Section 5813 shall include but are not limited to the following:

(1) Failure to appear or appearing late at a conference or trial where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.

(2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.

(3) Failure to timely serve documents (including but not limited to medical reports and medical-legal reports) as required by the rules of the Appeals Board, the Court Administrator, or the Administrative Director, where the documents are within the party or lien claimant's possession or control, unless that failure resulted from mistake, inadvertence, or excusable neglect.

(4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director or the Court Administrator, or with any award or order of the Workers' Compensation Appeals Board, including an order of discovery, which is not pending on

reconsideration, removal or appellate review and which is not subject to a timely petition for reconsideration, removal, or appellate review, unless that failure results from mistake, inadvertence, surprise, or excusable neglect.

(5) Executing a declaration or verification to any petition, pleading, or other document filed with the Workers' Compensation Appeals Board:

(A) that: (i) contains false or substantially false statements of fact; (ii) contains statements of fact that are substantially misleading; (iii) contains substantial misrepresentations of fact; (iv) contains statements of fact that are made without any reasonable basis or with reckless indifference as to their truth or falsity; (v) contains statements of fact that are literally true, but are intentionally presented in a manner reasonably calculated to deceive; and/or (vi) conceals or substantially conceals material facts; and

(B) where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(6) Bringing a claim, conducting a defense, or asserting a position:

(A) that is: (i) indisputably without merit, (ii) done solely or primarily for the purpose of harassing or maliciously injuring any person, and/or (iii) done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation; and

(B) where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law - unless it can be supported by a nonfrivolous argument for an extension, modification, or reversal of the existing law or for the establishment of new law - and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct. In determining whether a claim, defense, issue, or argument is warranted under existing law, or if there is a reasonable excuse for it, consideration shall be given to:

(A) whether there are reasonable ambiguities or conflicts in the existing statutory, regulatory, or case law, taking into consideration the extent to which a litigant has researched the issues and found some support for its theories; and

(B) whether the claim, defense, issue, or argument is reasonably being asserted to preserve it for reconsideration or appellate review.

This subdivision is specifically intended not to have a "chilling effect" on a party or lien claimant's ability to raise and pursue legal arguments that reasonably can be regarded as not settled.

(8) Asserting a position that misstates or substantially misstates the law, and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(9) Using any language or gesture at or in connection with any hearing, or using any language in any pleading or other document:

(A) where the language or gesture (i) is directed to the Workers' Compensation Appeals Board, to any of its officials or staff, or to any party or lien claimant (or the attorney or other representative for a party or lien claimant) and (ii) is patently insulting, offensive, insolent, intemperate, foul, vulgar, obscene, abusive, or disrespectful; or

(B) where the language or gesture impugns the integrity of the Workers' Compensation Appeals Board or its Commissioners, judges, or staff.

(e) Notwithstanding any other provision of these rules, for purposes of this rule and Labor Code section 5813: (1) a lien claimant may be deemed a "party" at any stage of the proceedings before the Workers' Compensation Appeals Board; and (2) an "attorney" includes a lay representative of a party or lien claimant.

(f) This rule shall apply only to applications filed on or after January 1, 1994.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903.6(c) and 5813, Labor Code.

§ 10562. Failure to Appear.

(a) Where a party served with notice of trial fails to appear either in person or by attorney or representative, the workers' compensation judge may

(1) dismiss the application after issuing a ten (10) day notice of intention to dismiss, or

(2) hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a ten (10) day notice of intention to submit, make such decision as is just and proper.

(b) Where a party served with notice of a mandatory settlement conference fails to appear at the conference, the workers' compensation judge may

(1) dismiss the application after issuing a ten (10) day notice of intention to dismiss, or

(2) close discovery and forward the case to the presiding workers' compensation judge to set for trial.

(c) Where a party, after notice, fails to appear at either a trial or a conference and good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar or may continue the case to a date certain.

(d) Where a lien claimant served with notice of a conference fails to appear at the conference either in person or by attorney or representative, and fails to have a person with settlement authority available by telephone, the workers' compensation judge may

(1) dismiss the lien claim after issuing a ten (10) day notice of intention to dismiss with or without prejudice, or

(2) close discovery and forward the case to the presiding workers' compensation judge to set for trial.

(e) Where a lien claimant served with notice of a trial fails to appear, the workers' compensation judge may

(1) dismiss the lien claim after issuing a ten (10) day notice of intention to dismiss with or without prejudice, or

(2) hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a ten (10) day notice of intention to submit, make such decision as is just and proper, or

(3) defer the issue to the lien and submit the case on the remaining issues.

(f) If the workers' compensation judge defers a lien issue, upon the issuance of his or her decision on the remaining issues, the workers' compensation judge shall

(1) issue a ten (10) day notice of intention to order payment of the lien in full or in part, or

(2) issue a ten (10) day notice of intention to disallow the lien, or

(3) continue the lien issue to a lien conference.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Sections 5502(e) and 5708, Labor Code.

§ 10563. Appearances Required. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5502(e) and 5708, Labor Code.

§ 10564. Interpreters.

Subject to the Rules of the Administrative Director, the Workers' Compensation Appeals Board may in any case appoint an interpreter and fix the interpreter's compensation. It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter. For injuries before January 1, 1994, interpreter's fees that are reasonably, actually and necessarily incurred and that are not allowed under Labor Code Section 4600 shall be allowed as costs under Labor Code Section 5811. Recovery shall be allowed in the amount charged by the interpreter unless:

- (1) proof of unreasonableness is entered by the party contesting the reasonableness of the charge, or
- (2) the charge is manifestly unreasonable.

For injuries on or after January 1, 1994, interpreter's fees that are reasonably, actually and necessarily incurred shall be allowed as provided by Labor Code Sections 4600, 5710 and 5811 as amended July 16, 1993. Interpreter's fees as defined in Labor Code section 4620, that are reasonably, actually and necessarily incurred as provided in Labor Code section 4621, shall be allowed in accordance with the fee schedule set by the Administrative Director.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4600, 4621, 5710 and 5811, Labor Code.

§ 10566. Minutes of Hearing and Summary of Evidence.

Minutes of hearing and summary of evidence shall be prepared at the conclusion of each hearing and filed in the record of proceedings. They shall include:

- (a) The names of the commissioners, deputy commissioner or workers' compensation judge, reporter, the parties present, attorneys or other agents appearing therefor and witnesses sworn;
- (b) The place and date of said hearing;
- (c) All interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same) and the disposition, which shall include the time and action, if any, required for submission;
- (d) A summary of the evidence required by Labor Code Section 5313 that shall include a fair and unbiased summary of the testimony given by each witness;
- (e) If motion pictures are shown, a brief summary of their contents;
- (f) A fair statement of any offers of proof.

If the disposition is an order taking off calendar or a continuance, the reason therefor shall be given.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5313, Labor Code.

§ 10570. Minute Orders.

Interlocutory or interim orders, including dismissal of improper or unnecessary parties, may be entered upon the minutes of hearing and will become the order of the Workers' Compensation Appeals Board upon the filing thereof.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Section 5307.5, Labor Code.

§ 10578. Waiver of Summary of Evidence.

The summary of evidence need not be filed upon waiver by the parties or upon issuance of a stipulated order, decision or award.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5702, Labor Code.

§ 10580. Evidence Taken Without Notice.

Transcripts or summaries of testimony taken without notice and copies of all reports and other matters added to the record, otherwise than during the course of an open hearing, shall be served upon the parties to the proceeding. Unless it is otherwise expressly provided, the parties shall be allowed 10 days after service of the testimony and reports within which to produce evidence in explanation or rebuttal or to request further proceedings before the case shall be deemed submitted for decision.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5704, Labor Code.

§ 10582. Inactive Cases, Procedure, Subsequent Action.

This rule applies to injuries occurring before January 1, 1990 and on or after January 1, 1994.

An Application for Adjudication filed without an accompanying Declaration of Readiness to Proceed will be placed in inactive status.

Cases set for hearing may be removed from the active calendar by an order taking off calendar.

Cases in off calendar status may be restored to the active calendar upon the filing and serving of a properly executed Declaration of Readiness to Proceed.

Unless a case is activated for hearing within one year after the filing of the Application for Adjudication or the entry of an order taking off calendar, the case may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution. A case may be dismissed after issuance of a ten (10) day notice of intention to dismiss and an opportunity to be heard, but not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

A petition by a defendant to dismiss the case must be accompanied by a copy of a letter mailed to the applicant and, if represented, to the applicant's attorney or representative, more than thirty (30) days before the filing of the petition to dismiss. This letter must state that it is the intention of the persons signing the letter to file a petition for dismissal thirty (30) days after the date of that letter unless the applicant or his attorney or representative shows in writing some good reason for not dismissing the case. A copy of the reply, if any, must be attached to the petition to dismiss. A copy of the petition must be served on all parties and all lien claimants.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5405 and 5406, Labor Code.

§ 10583. Dismissal of Claim Form -Labor Code Section 5404.5.

Where an application for adjudication for an injury on or after January 1, 1990 and before January 1, 1994, has not been filed by any of the parties, an employer or insurer seeking dismissal of a claim form for lack of prosecution shall solely utilize the procedures set forth in Labor Code Section 5404.5 and shall not seek an

order of dismissal from the Appeals Board by the filing of an application for adjudication, a request for pre-application determination or any other petition or request.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5404.5, Labor Code.

§ 10589. Consolidation of Cases.

(a) Consolidation of two or more related cases, involving either the same injured employee or multiple injured employees, rests in the sound discretion of the Workers' Compensation Appeals Board. In exercising that discretion, the Workers' Compensation Appeals Board shall take into consideration any relevant factors, including but not limited to the following:

- (1) whether there are common issues of fact or law;
- (2) the complexity of the issues involved;
- (3) the potential prejudice to any party, including but not limited to whether granting consolidation would significantly delay the trial of any of the cases involved;
- (4) the avoidance of duplicate or inconsistent orders; and
- (5) the efficient utilization of judicial resources.

Consolidation may be ordered for limited purposes or for all purposes.

(b) Consolidation may be ordered by the Workers' Compensation Appeals Board on its own motion, or may be ordered based upon a petition filed by one of the parties. A petition to consolidate shall:

- (1) List all named parties in each case;
- (2) Contain the adjudication case numbers of all the cases sought to be consolidated, with the lowest numbered case shown first;
- (3) Be filed in each case sought to be consolidated; and
- (4) Be served on all attorneys or other representatives of record and on all non-represented parties in each case sought to be consolidated.

(c) Any order regarding consolidation shall be filed in each case to which the order relates.

(d) If consolidation is ordered, the Workers' Compensation Appeals Board, in its discretion, may designate one case as the master file for exhibits and pleadings. If a master file is designated, any subsequent exhibits and pleadings filed by the parties and lien claimants during the period of consolidation shall be filed only in the master case, however, all pleadings and exhibit cover sheets filed shall include the caption and case number of the master file case, followed by the case numbers of all of the other consolidated cases.

(e) If a master file has been designated and the consolidated cases are tried, all relevant documentary evidence previously received in an individual case shall be deemed admitted in evidence in the consolidated proceedings under the master file and shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the designation of the master file shall be similarly received with like force and effect.

(f) When cases are consolidated, joint minutes of hearing, summaries of evidence, opinions, decisions, orders, findings, or awards may be used, however, copies shall be filed in the record of proceedings of each case.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5300, 5301, 5303 and 5708, Labor Code.

§ 10590. Consolidated Cases-Same Injured Worker. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5303, Labor Code.

§ 10591. Consolidating Cases-Multiple Injured Workers. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5303, 5310 and 5708, Labor Code.

§ 10592. Pleadings in Consolidated Cases. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5303 and 5313, Labor Code.

§ 10593. Testimony of Judicial or Quasi-Judicial Officers of the Workers' Compensation Appeals Board or of the Division of Workers' Compensation.

(a) No judicial or quasi-judicial officer of the Workers' Compensation Appeals Board or of the Division of Workers' Compensation may be subpoenaed or ordered to testify regarding either (1) the reasons for or basis of any decision or ruling he or she has made or (2) his or her opinion regarding any statements, conduct, or events occurring in proceedings before him or her, except as follows:

(A) The judicial or quasi-judicial officer may be ordered to testify where his or her testimony is necessary on an issue of disqualification under Labor Code section 5311 and Code of Civil Procedure section 641.

(B) The judicial or quasi-judicial officer may be ordered to testify where his or her testimony is necessary on an issue of an alleged ex parte communication.

The judicial or quasi-judicial officer may be subpoenaed or ordered to testify as a percipient witness to statements, conduct, or events that occurred in the proceedings before him or her, to the same extent as any other percipient witness.

(b) The testimony of a judicial or quasi-judicial officer shall be given only on the terms and conditions ordered by the presiding workers' compensation judge of the district office having venue, or by the Appeals Board, after the filing of a "Petition to Compel the Testimony of a Judicial or Quasi-Judicial Officer."

(1) The petition to compel shall set forth with specificity the facts (or alleged facts) and law that support the petition.

(2) The petition to compel shall be verified under penalty of perjury.

(3) The petition to compel shall be served on all other parties, on all lien claimants whose liens are presently pending in issue in the underlying claim to which the petition relates, and on the Legal Unit of the Division of Workers' Compensation (DWC-Legal Unit), together with a proof of service. [As of the effective date of this rule, the street address of the DWC-Legal Unit is 1515 Clay Street, 18th Floor, Oakland, CA 94612-1402 and the Post Office Box of the DWC-Legal Unit is P.O. Box 420603, San Francisco, CA 94142. However, current information regarding the street address and Post Office Box of the DWC-Legal Unit may be obtained by calling the Headquarters of the Division of Workers' Compensation, whose number, as of the effective date of this rule, is (510) 286-7100.]

(4) A petition to compel that does not meet all of the foregoing requirements may be summarily dismissed or denied.

(c) The other parties, lien claimants, and the DWC-Legal Unit shall have 15 days within which to file any objection to the petition to compel.



(d) The petition to compel shall be determined: (1) by the presiding workers' compensation judge of the district office having venue; (2) by a Deputy Commissioner of the Appeals Board, if the petition to compel relates to the presiding workers' compensation judge of the district office having venue; or (3) by the Appeals Board, if the petition to compel relates to a pending or impending petition for reconsideration, removal or disqualification,. The petition may be determined on the pleadings submitted or, in the discretion of the presiding workers' compensation judge or the Appeals Board, the petition may be set for a hearing.

(e) In determining whether to grant the petition to compel (and, if granted, in determining the terms and conditions upon which the testimony of the judicial or quasi-judicial officer may be given), the presiding workers' compensation judge or the Appeals Board may consider, among other things:

(1) Whether the testimony of the judicial or quasi-judicial officer is reasonably necessary, taking into consideration (A) whether statements in the judicial or quasi-judicial officer's opinion on decision, report on reconsideration, removal, or disqualification, or other similar statements are sufficient to resolve any allegation by a party or lien claimant; and (B) if not, whether the judicial or quasi-judicial officer's factual statements may be fairly provided by an affidavit or declaration under penalty of perjury.

(2) Whether the testimony of the judicial or quasi-judicial officer under the "percipient witness" exception would be cumulative to the testimony of other percipient witnesses.

(f) For purposes of this section, the term "judicial or quasi-judicial officer of the Workers' Compensation Appeals Board or of the Division of Workers' Compensation" shall include, but shall not be limited to: (1) any Commissioner; (2) any Deputy Commissioner; (3) any presiding workers' compensation judge or workers' compensation judge; (4) any pro tempore workers' compensation judge; (5) any special master appointed by the Workers' Compensation Appeals Board; (6) the Administrative Director and his or her designee; (7) the Court Administrator and his or her designee; (8) any workers' compensation consultant of the Rehabilitation Unit or of the Retraining and Return to Work Unit; and (9) any arbitrator or mediator.

(g) For purposes of this section, the term "testify" shall include testimony in either oral or written form (e.g., affidavits, declarations, interrogatories) and shall include all testimony, whether given at a deposition or a hearing.

(h) This section shall apply solely to testimony sought in connection with a matter within the jurisdiction of the Workers' Compensation Appeals Board, and it shall not apply to testimony sought pursuant to the authority of any other forum.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5300, 5301, 5309, 5700, 5701 and 5708, Labor Code; and Section 703.5, Evidence Code.

## **ARTICLE 9. EVIDENCE AND REPORTS**

### **§ 10600. Evidence and Reports.**

The filing of a document does not signify its receipt in evidence, and, except for the documents listed in section 10750 of these Rules, only those documents that have been received in evidence shall be included in the record of proceedings on the case.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5708, Labor Code.

### **§ 10601. Copies of Reports and Records.**

Where documents, including videotapes, are to be offered into evidence, copies shall be served on all adverse parties no later than the mandatory settlement conference, unless a satisfactory showing is made that the documents were not available for service by that time.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5502(e), Labor Code.

§ 10602. Formal Permanent Disability Rating Determinations.

The Workers' Compensation Appeals Board may request the Disability Evaluation Unit to prepare a formal rating determination on a form prescribed for that purpose by the Administrative Director. The request may refer to an accompanying medical report or chart for the sole purpose of describing measurable physical elements of the condition that are clearly and exactly identifiable. In every instance the request shall describe the factors of disability in full.

The report of the Disability Evaluation Unit in response to the request shall constitute evidence only as to the percentage of the permanent disability based on the factors described, and the report shall not constitute evidence as to the existence of the permanent disability described.

The report of the Disability Evaluation Unit shall be filed and served on the parties and shall include or be accompanied by a notice that the case shall be submitted for decision seven (7) days after service unless written objection is made within that time.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4660 and 5708, Labor Code.  
§ 10603. Oversized Exhibits, Diagnostic Imaging, Physical Exhibits, and Exhibits on Media.

(a) The following exhibits shall be filed only at the time of trial:

(1) Oversized documents, other than medical reports, that are: (A) larger than 11 x 17 inches (e.g., maps, diagrams, and schematic drawings) or (B) over 25 pages in length;

(2) Diagnostic imaging, including but not limited to any X-ray, computed axial tomography (CAT) scan, magnetic resonance imaging (MRI), nuclear medicine, positron emission tomography (PET) scan, mammography, ultrasound, or other similar medical imaging that is stored on digital, film, or other non-paper media;

(3) Original business or office records;

(4) Physical objects or other tangible things;

(5) Any CD-ROM, DVD, or other digital media, including but not limited to: (A) digital photographs; (B) digital video recordings; and (C) digital audio recordings;

(6) Videotapes, audiotapes, films and other non-digital video and/or audio recordings or images; and

(7) Photographs printed on paper.

(b) Unless otherwise ordered by the Workers' Compensation Appeals Board, any exhibit listed in subdivision (a) that is offered into evidence (whether or not admitted into evidence) shall be retained by the filing party (or an agent of the filing party) until the later of either: (1) five years after the filing of the initial application for adjudication (or other case opening document) or (2) at least six months after all appeals have been exhausted or the time for seeking appellate review has expired with respect to the decision on the issue(s) for which the exhibit was offered in evidence. After expiration of the later of these two time periods, the party may destroy the exhibit, unless the Workers' Compensation Appeals Board has ordered that the exhibit be preserved for a longer period.

(c) Before and during the period of retention, the filing party shall:

(1) Maintain the exhibit under conditions that will protect it against loss, destruction, or tampering, and that will preserve its quality and integrity as far as practicable;

(2) At the request of any other party to the action, promptly permit the party to inspect or view the exhibit; and

(3) At the request of any other party to the action, and if practicable, promptly furnish the party a copy of the exhibit or promptly permit the party to make a copy.

For purposes of subsection (c), the term "exhibit" shall include any item listed in subsection (a), whether or not the party or lien claimant in possession or control of that item intends to offer it in evidence.

(d) Any disputes regarding subdivision (c), including but not limited to issues of timing and costs, may be submitted for determination to the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5309, 5701, 5703, 5704 and 5708, Labor Code

#### § 10604. Certified Copies.

Certified copies of the reports or records of any governmental agency, division or bureau shall be admissible in evidence in lieu of the original reports or records.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5703 and 5708, Labor Code.

#### § 10605. Reproductions of Documents.

A nonerasable optical image reproduction provided that additions, deletions, or changes to the original document are not permitted by the technology, a photostatic, microfilm, microcard, miniature photographic, or other photographic copy or reproduction, or an enlargement thereof, of a writing is admissible as the writing itself if the copy or reproduction was made and preserved as a part of the records of a business (as defined by Evidence Code Section 1270) in the regular course of that business. The introduction of the copy, reproduction, or enlargement does not preclude admission of the original writing if it is still in existence. The Workers' Compensation Appeals Board may require the introduction of a hard copy printout of the document.

A printed representation of images stored on a video or digital medium is presumed to be an accurate representation of the images it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of images stored on a video or digital medium is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving by a preponderance of the evidence, that the printed representation is an accurate representation of the existence and content of the images that it purports to represent.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5708, Labor Code.

#### § 10606. Physicians' Reports as Evidence.

The Workers' Compensation Appeals Board favors the production of medical evidence in the form of written reports. Direct examination of a medical witness will not be received at a trial except upon a showing of good cause. A continuance may be granted for rebuttal testimony subject to Labor Code Section 5502.5.

These reports should include where applicable:

(a) the date of the examination;

(b) the history of the injury;

(c) the patient's complaints;

(d) a listing of all information received from the parties reviewed in preparation of the report or relied upon for the formulation of the physician's opinion;

(e) the patient's medical history, including injuries and conditions, and residuals thereof, if any;

- (f) findings on examination;
- (g) a diagnosis;
- (h) opinion as to the nature, extent, and duration of disability and work limitations, if any;
- (i) cause of the disability;
- (j) treatment indicated;
- (k) opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation;
- (l) apportionment of disability, if any;
- (m) a determination of the percent of the total causation resulting from actual events of employment, if the injury is alleged to be a psychiatric injury;
- (n) the reasons for the opinion; and,
- (o) the signature of the physician.

Failure to comply with (a) through (o) will be considered in weighing the evidence.

In death cases, the reports of non-examining physicians may be admitted into evidence in lieu of oral testimony.

All medical-legal reports shall comply with the provisions of Labor Code Section 4628. Except as otherwise provided by the Labor Code, including Labor Code Sections 4628 and 5703, and the rules of practice and procedure of the Appeals Board, failure to comply with the requirements of this section will not make the report inadmissible but will be considered in weighing the evidence.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4603.2, 4628, 5703, 5708 and 5709, Labor Code.

#### § 10607. Computer Printouts of Benefits Paid.

If a party requests that a defendant provide a computer printout of benefits paid, within twenty (20) days the defendant shall provide the requesting party with a current computer printout of benefits paid. The printout shall include the date and amount of each payment of temporary disability indemnity, permanent disability indemnity, and vocational rehabilitation maintenance allowance, and the period covered by each payment, and the date, payee, and amount of each payment for medical treatment. This request may not be made more frequently than once in a one-hundred-twenty (120) day period unless there is a change in indemnity payments.

A defendant that has paid benefits shall have a current computer printout of benefits paid available for inspection at every mandatory settlement conference.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5502(e) and 5708, Labor Code.

#### § 10608. Filing and Service of Medical Reports and Medical-Legal Reports.

(a) All medical reports and medical-legal reports filed with the Workers' Compensation Appeals Board shall be filed in accordance with the regulations of the Court Administrator, or as otherwise provided by these rules. Service of all medical reports and medical-legal reports on other parties and lien claimants shall be made in

accordance with the provisions of this section.

(b) After the filing of an Application for Adjudication, if a party or lien claimant is requested by another party or lien claimant to serve copies of medical reports and medical-legal reports relating to the claim, the party or lien claimant receiving the request shall serve copies of the reports that are in its possession or under its control on the requesting party or lien claimant within six (6) days of the request, if the reports have not been previously served. The party or lien claimant receiving the request shall serve a copy of any subsequently-received medical report or medical-legal report within six (6) days of receipt of the report.

(c) At the time of the filing of any Declaration of Readiness to Proceed or Declaration of Readiness to Proceed to Expedited Hearing, the filing declarant shall concurrently serve copies of all medical reports and medical-legal reports relating to the claim that have not been previously served and that are in the possession or under the control of the filing declarant on: (1) all other parties, whether or not they have previously requested service; and (2) all lien claimants that have previously requested service. The filing declarant also shall serve a copy of any subsequently-received medical report or medical-legal report relating to the claim within six (6) days of receipt of the report.

(d) Within six (6) days after service of any Declaration of Readiness to Proceed or Declaration of Readiness to Proceed to Expedited Hearing, all other parties and lien claimants shall serve copies of all medical reports and medical-legal reports relating to the claim that are in their possession or under their control, and that have not been previously served, on: (1) all other parties, whether or not they have previously requested service; and (2) all lien claimants that have previously requested service. The other parties and lien claimants also shall serve a copy of any subsequently-received medical report or medical-legal report relating to the claim within six (6) days of receipt of the report, consistent with subsections (d)(1) and (d)(2).

(e) If, at any time after the periods specified in subsections (b), (c) and (d), a lien claimant initiates a request for service of medical reports and medical-legal reports, all parties and other lien claimants shall serve the requesting lien claimant with copies of all medical reports and medical-legal reports relating to the claim that are in their possession or under their control, and that have not been previously served, within six (6) days of receipt of the request. The parties and other lien claimants also shall serve a copy of any subsequently-received medical report or medical-legal report relating to the claim within six (6) days of receipt of the report.

(f) All medical reports or medical-legal reports relating to the claim that have not been previously served shall be served on all other parties and lien claimants upon the filing of a compromise and release or stipulations with request for award, unless the rights and/or liabilities of those parties or lien claimants were previously fully resolved.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5001, 5502, 5703 and 5708, Labor Code.

#### § 10609. Service on Lien Claimants.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903.1, 5708 and 5709, Labor Code.

#### § 10610. Cross-Examination of Physicians.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; Sections 4621 and 5709, Labor Code.

#### § 10615. Continuing Duty to Serve.

During the continuing jurisdiction of the Workers' Compensation Appeals Board, the parties have a continuing duty to serve on each other and any lien claimant requesting service any physicians' reports received.

Note: Authority cited: Sections 133 and 5307, Labor Code.

§ 10616. Employer-Maintained Medical Records.

A written communication from a physician containing any information listed in Section 10606 that is contained in any record maintained by the employer in the employer's capacity as employer will be deemed to be a physician's report and shall be served as required in Sections 10608 and 10615. Records from an employee assistance program are not required to be filed or served unless ordered by the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4600, 5703 and 5708, Labor Code.

§ 10618. X-Rays.

On order of the Appeals Board or workers' compensation judge, a party shall forthwith transmit all X-rays to the person designated in the order.

X-rays shall be subpoenaed only when they are relevant to pending issues and there is a present and bona fide intent to offer them in evidence. X-rays produced in violation of this rule will be ordered returned to their original custodian at the expense of the party causing them to be produced.

Upon reasonable request of a party, X-rays in the possession of, or subject to the control of, an adverse party or lien claimant shall be made available for examination by the requesting party or persons designated by that party at a time or place convenient to the persons to make the examination.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4600 and 5708, Labor Code.

§ 10619. Subpoena of X-Rays.

Note: Authority cited: Sections 133, 5307, 5708 and 5709, Labor Code. Reference: Sections 4600, 5708 and 5709, Labor Code.

§ 10620. Examination of X-Rays.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4600, 5708 and 5709, Labor Code.

§ 10622. Failure to Comply.

Disclosure, service and filing of all medical reports in the possession and control of every party to a proceeding, except as otherwise expressly provided, is essential to and required in the expeditious determination of controversies.

The Workers' Compensation Appeals Board may decline to receive in evidence, either at or subsequent to hearing, any report offered under the provisions of Labor Code Section 5703 by a party who has failed to comply with the provisions of Rules 10600, 10608, 10615, 10616 or 10618. A medical report shall not be refused admission into evidence at a hearing, solely upon the ground of a late filing, where examination was diligently sought and said report came into possession or control of the party offering it within the preceding seven (7) days.

Where a willful suppression of a medical report is shown to exist in violation of these rules, it shall be presumed that the findings, conclusions and opinions therein contained would be adverse, if produced. The remedies in this section are cumulative to all others authorized by law.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5708, Labor Code.

§ 10626. Examining and Copying Hospital and Physicians' Records.

Subject to Labor Code section 3762, and except as otherwise provided by law, all parties, their attorneys, agents and physicians shall be entitled to examine and make copies of all or any part of physician, hospital, or dispensary records that are relevant to the claims made and the issues pending in a proceeding before the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 4600, Labor Code.

§ 10629. Filing and Listing of Exhibits.

(a) Proposed exhibits shall be filed in accordance with the provisions of section 10233 and 10603.

(b) At every mandatory settlement conference, regular hearing, expedited hearing, and conference at which any issue will be submitted for decision, each party or lien claimant shall submit, and shall personally serve on each other appearing party or appearing lien claimant, a list of the exhibits that the party or lien claimant proposes to offer in evidence.

(1) If any such hearing is continued, a new list identifying all of the party or lien claimant's proposed exhibits (including all previously listed exhibits that the party or lien claimant still intends to offer, and any new exhibits) shall be prepared and served, with the exceptions that: (A) any exhibit already admitted in evidence, or marked in evidence but not admitted, need not be re-listed; (B) if the previous list was accepted for filing and scanned into EAMS, and no changes have been made to the previous list, a new list need not be prepared and served; and (C) if the previous list was served (but not accepted for filing and scanned into EAMS), and no changes have been made to the previous list, a new list need not be served, but the list still must be filed.

(2) If a list of exhibits is being submitted after an initial mandatory settlement conference, the list shall separately identify:

(A) the exhibits that the party listed at the time of the initial mandatory settlement conference; and

(B) the exhibits that the party did not list at the time of the initial mandatory settlement conference.

(c) If a party or lien claimant with a currently pending issue fails to appear after proper notice at any hearing described in subdivision (b), even if the party or lien claimant was excused from appearing, then:

(1) the non-appearing party or lien claimant with a currently pending issue shall forthwith file and serve its exhibit list, but consideration of its exhibits shall be subject to the limitations or evidentiary sanctions set forth in section 10562; and

(2) the appearing party(ies) or lien claimant(s) shall forthwith serve their exhibit list(s) on the non-appearing party or lien claimant.

For purposes of this subdivision, a party or lien claimant will be deemed to have a "currently pending issue" if an issue directly related to that party or lien claimant has been raised in a declaration of readiness and that issue has not been resolved by a stipulation or adjudication, it has not been withdrawn (including by failure to raise the issue at the mandatory settlement conference or trial), and it has not been judicially deferred.

(d) Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., "the July 1, 2008 medical report of John Doe, M.D. (3 pages)"). Each medical report, medical-legal report, medical record, or other paper or record having a different author/provider and/or a different date is a separate "document" and must be listed as a separate exhibit, with the exception that the following documents may be listed as a single exhibit, unless otherwise ordered by the Workers' Compensation Appeals Board:

(1) excerpted portions of physician, hospital or dispensary records, provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates of treatment or other service(s) covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of physician, hospital or dispensary records shall be admitted in evidence;

(2) excerpted portions of personnel records, wage records and statements, job descriptions, and other business records provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the date or dates covered by the record or document, by the author or authors of the record or document, and by any available page number(s) (e.g., Bates-numbered pages of records or documents photocopied and numbered by a legal copy service). Only the relevant excerpts of personnel records, wage records and statements, job descriptions, and other business records shall be admitted in evidence; and

(3) Explanation of Benefits (EOB) letters.

(e) Each exhibit listed must specify an exhibit number or initial that identifies it and the party, parties, or lien claimant offering it (e.g., Applicant's Exhibit 1, 2, 3, etc.; Defendant's Exhibit A, B, C, etc.; Lien Claimant's AA, BB, CC, etc.; Joint Exhibit XX, YY, etc.).

(f) Nothing in this section shall prevent a workers' compensation judge from referring an unrepresented injured employee, dependent or uninsured employer to the Information and Assistance Office to prepare an exhibit list in accordance with the provisions of subdivisions (a), (b), (c), (d) and (e).

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5309 and 5708, Labor Code.

§ 10630. Return of Exhibits. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 126, Labor Code.

§ 10631. Specific Finding of Fact -Labor Code Section 139.2(d)(2).

Where a qualified medical evaluator's report has been considered and rejected pursuant to Labor Code section 139.2, subdivision (d)(2), the workers' compensation judge or Appeals Board shall make and serve a specific finding on the qualified medical evaluator and the Industrial Medical Council at the time of decision on the regular workers' compensation issues. The specific finding may be included in the decision.

If the Appeals Board, on reconsideration, affirms or sets aside the specific finding of fact filed by a workers' compensation judge, it shall advise the qualified medical evaluator and the Industrial Medical Council at the time of service of its decision on the petition for reconsideration. If the workers' compensation judge does not make a specific finding and the Appeals Board, on reconsideration, makes a specific finding of rejection pursuant to Labor Code Section 139.2, subdivision (d)(2), it shall serve its specific finding on the qualified medical evaluator and the Industrial Medical Council at the time it serves its decision after reconsideration. Rejection of a qualified medical evaluator's report pursuant to Labor Code section 139.2, subdivision (d)(2) shall occur where the qualified medical evaluator's report does not meet the minimum standards prescribed by the provisions of Rule 10606 and the regulations of the Industrial Medical Council.

This rule shall apply to injuries on or after January 1, 1994.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 139.2(d)(2), Labor Code.

§ 10632. Labor Code Section 4065 -Evidence.

Where the provisions of Labor Code Section 4065 apply, the workers' compensation judge shall receive into



evidence the "proposed ratings" submitted by the parties.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4065, Labor Code.

§ 10633. Proposed Rating -Labor Code Section 4065.

A "proposed rating" pursuant to Labor Code Section 4065 shall include the appropriate disability numbers for each part of the body resulting in permanent disability and a standard rating of the factors of disability.

Where the provisions of Labor Code Section 4065 have been used to determine permanent disability, the workers' compensation judge shall comply with Labor Code Section 5313 and state the evidence relied upon and the reasons or grounds on which selection of the proposed rating is based.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4065, Labor Code.

§ 10634. Labor Code Section 4628(k) Requests.

Failure to comply with Labor Code Section 4628, subdivision (k) shall not make the medical report inadmissible as evidence and eliminate liability for medical-legal costs where good cause has been shown for the failure to comply and, after notice of non-compliance, compliance takes place within a reasonable period of time or within a time prescribed by the workers' compensation judge.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4628(k), Labor Code.

§ 10635. Reasonable Value of Medical Service.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4600, 4624 and 4625, Labor Code.

**ARTICLE 10. MEDICAL EXAMINERS**

§ 10700. Impartial Medical Examiners.

Note: Authority cited: Sections 133 and 5703, Labor Code. Reference: Sections 139.1 and 5703.5, Labor Code.

§ 10705. Policy.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution.

§ 10715. Orders Directing Applicants to Report for Medical Examination.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 139, Labor Code.

§ 10718. Prohibited Communication.

All correspondence concerning the examination and reports of a physician appointed pursuant to Labor Code Section 5701 or 5703.5 shall be made through the Workers' Compensation Appeals Board, and no party, attorney or representative shall communicate with that physician with respect to the merits of the case unless ordered to do so by the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5701 and 5703.5, Labor Code.

§ 10722. Filing and Service of Medical Reports.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 139, 5703.5, 5708, Labor Code.

§ 10727. Cross-Examination by Deposition.

The Workers' Compensation Appeals Board favors cross-examination of medical witnesses by way of deposition. Reasonable costs in connection with such deposition shall be allowed under Labor Code Section 4621.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Section 5708, Labor Code.

**ARTICLE 11. TRANSCRIPT OF TESTIMONY**

§ 10740. Transcripts.

Unless otherwise ordered by a commissioner, a deputy commissioner, or a presiding workers' compensation judge, testimony taken at hearings in compensation proceedings will not be transcribed except upon the request of a party accompanied by the fee prescribed in the Rules of the Administrative Director. Requests for transcription of testimony shall be in writing, served on all other parties, directed to the transcript clerk and accompanied by a deposit fee based on the transcript clerk's estimate of the number of pages to be transcribed. If the actual fee exceeds the deposit, the purchaser shall pay the balance of the fee before the transcript is released. Any excess deposit will be returned to the purchaser. No person shall make a photographic copy of a transcript from the Board file except upon payment prescribed by law for a copy of the transcript.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 127 and 5708, Labor Code.

**ARTICLE 12. RECORD OF PROCEEDINGS**

§ 10750. Record of Proceedings.

(a) The Workers' Compensation Appeals Board's record of proceedings consists of: the pleadings, declarations of readiness to proceed, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions and awards, and the arbitrator's file, if any. Each of these documents are part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings.

(b) Upon approval of a compromise and release or stipulations with request for award, all medical reports that have been filed as of the date of approval shall be deemed to have been admitted in evidence and shall be deemed to have been transferred to the record of proceedings.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126 and 5708, Labor Code.

§ 10751. Adjudication File.

(a) The Workers' Compensation Appeals Board's adjudication file shall consist of:

(1) all findings, orders, decisions, awards and correspondence issued by the Workers' Compensation Appeals Board, but not including documents that, under the rules of the Court Administrator, shall not be made available for inspection by any person (see current Rule 10271); and

(2) all documents filed by any party, lien claimant, attorney or other agent of record, but not including documents that, under the rules of the Court Administrator, shall not be filed (see current Rule 10222(b)), unless the Workers' Compensation Appeals Board has ordered that the document be filed.

(b) The adjudication file includes the record of proceedings.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 126, Labor Code.

#### § 10753. Inspection of Files.

Except as provided by sections 10754, 10271, and 10272, or as ordered by a workers' compensation judge or the Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board may be inspected in accordance with the provisions of section 10270.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 126, Labor Code.

#### § 10754. Sealed Documents.

Medical reports and other records contained in the adjudication case files of the Workers' Compensation Appeals Board shall be sealed only in accordance with the provisions of section 10272.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5708, Labor Code.

#### § 10755. Destruction of Records.

Except as otherwise provided by these rules, or as ordered by a workers' compensation judge or the Appeals Board, the adjudication case files of the Workers' Compensation Appeals Board shall be retained, returned, and destroyed in accordance with the provisions of section 10273.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 135, Labor Code.

#### § 10758. Destruction of Case Files. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 135, Labor Code.

#### § 10762. Reporters' Notes. [Repealed]

Note: Authority cited: Section 133 and 5307, Labor Code. Reference: Section 14755, Government Code; and Section 5708, Labor Code.

### **ARTICLE 13. LIENS**

§ 10770. Lien Procedure.

(a) Unless the lien claimant is excepted by parts (A) through (C) of section 10228(c)(5), any lien claimant under Labor Code sections 4903 or 4903.1 shall file its lien in writing utilizing an optical character recognition lien form approved by the Appeals Board or electronically as approved by the Administrative Director or the Court Administrator. Lien claimants excepted by parts (A) through (C) of section 10228(c)(5) may file a lien utilizing a non-optical character recognition form provided that it is in the same format and contains the same information as the corresponding OCR form approved by the Appeals Board.

(b) All lien claims filed shall be accompanied by: (1) a full statement or itemized voucher supporting the lien and justifying the right to reimbursement; and (2) a proof of service.

(c) All liens, along with the full statement or itemized voucher supporting the lien, shall be concurrently served as follows:

(1) the injured worker (or, if deceased, the worker's dependent(s)) shall be served, unless: (A) the worker or dependent is represented by an attorney or other agent of record, in which event service may be made solely upon the attorney or agent of record; or (B) the underlying case of the worker or dependent(s) has been resolved. For purposes of this subdivision, the underlying case will be deemed to have been resolved if:

(i) in a stipulated findings and award or in a compromise and release agreement, a defendant has agreed to hold the worker or dependent(s) harmless from the specific lien claim being filed and has agreed to pay, adjust, or litigate that lien;

(ii) a defendant had written notice of the lien in accordance with Labor Code section 4904(a) before the lien was filed and, in a stipulated findings and award or in a compromise and release agreement, that defendant has agreed to hold the worker or dependent harmless from all lien claims and has agreed to pay, adjust, or litigate all liens;

(iii) the application for adjudication of claim filed by the worker or the dependent(s) has been dismissed, and the lien claimant is filing or has filed a new application; or

(iv) the worker or the dependent(s) choose(s) not to proceed with his, her, or their case.

(2) any employer(s) or insurance carrier(s) that are parties to the case shall be served, unless the employer(s) or insurance carrier(s) is/are represented by an attorney or other agent of record, in which event service may be made solely upon the attorney(s) or other agent(s) of record.

Service of a lien on a party shall constitute notice to it of the existence of the lien.

(d) The Workers' Compensation Appeals Board shall not accept for filing a lien that does not bear an adjudication case number previously assigned by the Workers' Compensation Appeals Board for the injury, unless the lien claimant is also filing an initial (case opening) application in accordance with section 10770.5.

(e) The lien claimant shall provide the name, mailing address, and daytime telephone number of a person who will be available at the time of all conferences and trials, and who will have authority to resolve the lien on behalf of the lien claimant.

(f) After a lien has been filed, the lien claimant shall file any amendments to the lien, together with a full statement or itemized voucher supporting the amendment, and it shall serve the amended lien in accordance with subsection (c). When filing an amended lien, the lien claimant shall indicate on the box set forth on the lien form that it is an "amended" lien. For purposes of this subdivision, an "amended" lien includes: (1) a lien that is for or includes additional services or charges for the same injured employee for the same date or dates of injury; (2) a lien that reflects a change in the amount of the lien based on payments made by the defendant; or (3) a lien that has been corrected for clerical or mathematical error. A subsequent lien claim that adds an additional adjudication case number or numbers is an "amended" lien with respect to the adjudication case number(s) originally listed.

(g) Within five business days after a lien has been resolved or withdrawn, the lien claimant shall notify the Workers' Compensation Appeals Board, the party defendant(s), and the worker or dependent(s) (except as provided in subsection (c)).

(h) The lien claimant shall be notified by the Workers' Compensation Appeals Board when any hearing is scheduled, whether or not the hearing directly involves the lien.

(i) Inclusion of the injured employee's Social Security number on a lien form is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although a lien claimant is not required by law to include the employee's Social Security number, lien claimants are encouraged to do so because this will facilitate the processing and filing of the lien claim. Social Security numbers are used solely for identification and verification purposes in order to administer the workers' compensation system. A Social Security number will not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903, 4903.1, 4903.4, 4903.5, 4903.6 and 4904, Labor Code.

§ 10770.5. Verification to Filing of Lien Claim or Application by Lien Claimant.

(a) Any lien claim or application for adjudication filed under Labor Code section 4903(b) shall have attached to it a verification under penalty of perjury which shall contain a statement specifying in detail the facts establishing that one of the following has occurred:

(1) Sixty days have elapsed since the date of acceptance or rejection of liability for the claim, or the time provided for investigation of liability pursuant to Labor Code section 5402(b) has elapsed, whichever is earlier.

(2) The time provided for payment of medical treatment bills pursuant to Labor Code section 4603.2 has elapsed.

(3) The time provided for payment of medical-legal expenses pursuant to Labor Code section 4622 has elapsed.

(b) In addition, if an application for adjudication is being filed, the verification under penalty of perjury also shall contain:

(1) A statement specifying in detail the facts establishing that venue in the district office being designated is proper pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2); and

(2) A statement specifying in detail the facts establishing that the filing lien claimant has made a diligent search and has determined that no adjudication case number exists for the same injured worker and same date of injury at any district office. A diligent search shall include contacting the injured worker, contacting the employer or carrier, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

(c) The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California that one of the time periods set forth in Rule 10770.5(a) has elapsed and, if an application for adjudication is being filed, that venue is proper as set forth in Rule 10770.5(b) and that I have made a diligent search and have determined that no adjudication case number exists for the same injured worker and the same date of injury. In determining that no adjudication case number exists for the same injured worker and the same date of injury, I have made a diligent search consisting of the following efforts (specify):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

s/s \_\_\_\_\_ on \_\_\_\_\_

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903 and 4903.6, Labor Code.

§ 10770.6. Verification to Filing of Declaration of Readiness By or on Behalf of Lien Claimant.

No Declaration of Readiness to Proceed shall be filed for a lien under Labor Code section 4903(b) without an attached verification certifying under penalty of perjury either (1) that the underlying case has been resolved or (2) that at least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with his or her case. The declarant shall make a diligent search to determine that the injured worker has chosen not to proceed with his or her case and the verification shall specify the efforts made in conducting the diligent search. A diligent search shall include contacting the injured worker, contacting the employer or carrier, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California: (Check at least one box)

that the underlying case has been resolved.

that at least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with his or her case. In determining that the injured worker has chosen not to proceed with his or her case, I have made a diligent search consisting of the following efforts (specify):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

s/s \_\_\_\_\_ on \_\_\_\_\_

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 4903 and 4903.6, Labor Code.

§ 10771. Medical-Legal Expense. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4903.1, Labor Code.

§ 10772. Unemployment Compensation Disability Liens.

When an unemployment compensation disability lien is filed by the Employment Development Department, there shall be a rebuttable presumption that the amounts stated therein have been paid to the injured worker by the Employment Development Department.

In any case involving a lien claim for unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits where it appears that further benefits may have been paid subsequent to the filing of the claim of lien, the workers' compensation judge shall notify the lien claimant when the case is ready for decision or for order approving compromise and release and the lien claimant shall have five (5) days thereafter in which to file and serve an amended lien reflecting all payments made to and including the date of filing of the amended lien.

In cases where a compromise and release is filed and continuing unemployment compensation disability benefits or unemployment compensation benefits and extended duration benefits are being paid, the workers' compensation judge will ascertain the full amount of the lien claim as of the time of the approval of the compromise and release so that the allocation made under the authority of Labor Code Section 4904 may be changed to reflect unemployment compensation disability or unemployment compensation and extended duration payments to the date of decision.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4904, Labor Code.

§ 10773. Law Firm Employees.

(a) Law firm employees not holding current active membership in the State Bar may appear on behalf of the law firm if:

(1) the client has been fully informed of the involvement of the law firm employee and that the person is not a current active member of the State Bar of California;

(2) in all proceedings where the law firm employee appears and in all documents the person has prepared, the person appearing or preparing the documents is identified and it is fully disclosed that the person is not licensed to practice law in the State of California; and

(3) the attorney directly responsible for supervising the law firm employee appearing in any proceedings is identified.

(b) A workers' compensation judge shall not approve any compromise and release agreement or stipulations with request for award signed by a law firm employee who is not currently an active member of the State Bar of California without the specific written authorization of the attorney directly responsible for supervising the law firm employee.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4907, Labor Code.

**ARTICLE 14. ATTORNEYS AND REPRESENTATIVES**

§ 10774. Substitution or Dismissal of Attorneys.

Substitution or dismissal of attorneys must be made in the manner provided by Code of Civil Procedure Sections 284, 285 and 286. Dismissal of agents may be made by serving and filing a statement of dismissal.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Sections 4903, 4906, Labor Code.

§ 10775. Reasonable Attorney's Fee.

In establishing a reasonable attorney's fee, the workers' compensation judge or arbitrator shall consider the

- (a) responsibility assumed by the attorney,

- (b) care exercised in representing the applicant,

- (c) time involved,

- (d) results obtained.

Reference will be made to guidelines contained in the Policy and Procedural Manual and workers' compensation judges and arbitrators shall at all times comply with Labor Code section 5313 by setting forth the reasons or grounds for applying the guidelines in any fee determination.

Through its power to grant reconsideration on its own motion, the Appeals Board shall exercise authority to ascertain the extent to which these guidelines are followed.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4906, Labor Code.

§ 10776. Approval of Attorney's Fee.

- (a) No request for payment or demand for payment of a fee shall be made by any attorney for, or agent of, a worker or dependent of a worker until the fee has been approved or set by the Workers' Compensation Appeals Board.

- (b) No attorney or agent shall accept any money from a worker or dependent of a worker for the purpose of representing the worker or dependent of a worker before the Workers' Compensation Appeals Board or in any appellate procedure related thereto until the fee has been approved or set by the Workers' Compensation Appeals Board or an appellate court.

- (c) Any agreement between any attorney or agent and a worker or dependent of a worker for payment of a fee shall be submitted to the Workers' Compensation Appeals Board for approval within ten (10) days after the agreement is made.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4906, Labor Code.

§ 10778. Request for Increase of Attorney's Fee.

All requests for an increase in attorney's fee shall be accompanied by proof of service on the applicant of written notice of the attorney's adverse interest and of the applicant's right to seek independent counsel. Failure to so notify the applicant may constitute grounds for dismissal of the request for increase in fee.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Sections 4903, 4906, Labor Code.

§ 10779. Disbarred and Suspended Attorneys.

An attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of State Bar fees, or who has been placed on involuntary inactive enrollment status by the State Bar, or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a representative of any party before the Workers' Compensation Appeals Board during the time that the attorney is precluded from practicing law in this state.



Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 4907, Labor Code; and Section 6126, Business and Professions Code.

#### **ARTICLE 15. FINDINGS, AWARDS AND ORDERS**

##### § 10780. Dismissal Orders.

Except as provided in Rule 10562 and 10582 and unless good cause to the contrary appears, orders of dismissal of claim forms for injuries on or after January 1, 1990 and before January 1, 1994, and orders of dismissal of applications for adjudication for injuries before January 1, 1990 and on or after January 1, 1994, shall issue forthwith when requested by the employee. All other orders of dismissal of claim forms for injuries occurring on or after January 1, 1990 and before January 1, 1994, or orders of dismissal of applications for adjudication for injuries occurring before January 1, 1990 and on or after January 1, 1994, shall issue only after service of a notice of intention allowing at least fifteen (15) days for the adverse parties to show good cause to the contrary, and not by an order with a clause rendering the order null and void if an objection showing good cause is filed.

Note: Authority cited: Sections 133 and 5307, Labor Code.

##### § 10782. Vexatious Litigants.

(a) For purposes of this rule, "vexatious litigant" means:

(1) A party or lien claimant who, while acting in propria persona (i.e., while representing himself or herself) in proceedings before the Workers' Compensation Appeals Board, repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined against that party or lien claimant by the Workers' Compensation Appeals Board or by an appellate court;

(2) A party or lien claimant who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly files unmeritorious motions, pleadings, or other papers, repeatedly conducts or attempts to conduct unnecessary discovery, or repeatedly engages in other tactics that are in bad faith, are frivolous, or are solely intended to cause harassment or unnecessary delay; or

(3) A party or lien claimant who has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction(s), or occurrence(s) that are the subject, in whole or in substantial part, of the party or lien claimant's workers' compensation case.

For purposes of this rule, the phrase "finally determined" shall mean: (i) that all appeals have been exhausted or the time for seeking appellate review has expired; and (ii) the time for reopening under Labor Code sections 5410 or 5803 and 5804 has passed or, although the time for reopening under those sections has not passed, there is no good faith and non-frivolous basis for reopening.

(b) Upon the petition of a party or lien claimant, or upon the motion of any workers' compensation judge or the Appeals Board, a presiding workers' compensation judge of any district office having venue or the Appeals Board may declare a party or lien claimant as a vexatious litigant.

(c) No party or lien claimant shall be declared a vexatious litigant without being given notice and an opportunity to be heard. If a hearing is requested, the presiding workers' compensation judge or the Appeals Board, in his, her or its discretion, either may take and consider both oral and documentary evidence or may take and consider solely documentary evidence, including affidavits or other written declarations of fact made under penalty of perjury.

(d) If a party or lien claimant is declared to be a vexatious litigant, a presiding workers' compensation judge or the Appeals Board may enter a "prefiling order," i.e., an order which prohibits the vexatious litigant from filing, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness, petition, or other request for action by the Workers' Compensation Appeals Board without first obtaining leave of the presiding

workers' compensation judge of the district office where the request for action is proposed to be filed or, if the matter is pending before the Appeals Board on a petition for reconsideration, removal, or disqualification, without first obtaining leave from the Appeals Board. For purposes of this rule, a "petition" shall include, but not be limited to, a petition to reopen under Labor Code sections 5410, 5803, and 5804, a petition to enforce a medical treatment award, a penalty petition, or any other petition seeking to enforce or expand the vexatious litigant's previously determined rights.

(e) If a vexatious litigant proposes to file, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness, petition, or other request for action by the Workers' Compensation Appeals Board, the request for action shall be conditionally filed. Thereafter, the presiding workers' compensation judge, or the Appeals Board if the petition is for reconsideration, removal, or disqualification, shall deem the request for action to have been properly filed only if it appears that the request for action has not been filed in violation of subdivision (a). In determining whether the vexatious litigant's request for action has not been filed in violation of subdivision (a), the presiding workers' compensation judge, or the Appeals Board, shall consider the contents of the request for action and the Workers' Compensation Appeals Board's existing record of proceedings, as well as any other documentation that, in its discretion, the presiding workers' compensation judge or the Appeals Board asks to be submitted. Among the factors that the presiding workers' compensation judge or the Appeals Board may consider is whether there has been a significant change in circumstances (such as new or newly discovered evidence or a change in the law) that might materially affect an issue of fact or law that was previously finally determined against the vexatious litigant.

(f) If any in propria persona Application for Adjudication of Claim, Declaration of Readiness, petition, or other request for action by the Workers' Compensation Appeals Board from a vexatious litigant subject to a prefiling order is inadvertently accepted for filing (other than conditional filing in accordance with subdivision (e), above), then any other party or lien claimant may file (and shall concurrently serve on the vexatious litigant and any other affected parties or lien claimants) a notice stating that the request for action is being submitted by a vexatious litigant subject to a prefiling order as set forth in subdivision (d). The filing of the notice shall automatically stay the request for action until it is determined, in accordance with subdivision (e), whether the request for action should be deemed to have been properly filed.

(g) A copy of any prefiling order issued by a presiding workers' compensation judge or by the Appeals Board shall be submitted to the Secretary of the Appeals Board, who shall maintain a record of vexatious litigants subject to those prefiling orders and who shall annually disseminate a list of those persons to all presiding workers' compensation judges.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Article XIV, section 4, California Constitution; and Sections 391, 391.2, and 391.7, Code of Civil Procedure.

#### § 10785. Electronically Filed Decisions, Findings, Awards, and Orders.

The Appeals Board or a workers' compensation judge may electronically file any decision, findings, award, order or other document within EAMS, either by preparing the document in paper form and then scanning it into EAMS or by preparing the document directly within EAMS. Any such electronically filed document shall have the same legal effect as a document filed in paper form.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126, 5313 and 5908.5.

### **ARTICLE 16. EXECUTIONS AND CERTIFIED COPIES**

#### § 10820. When Certified Copies Will Issue.

Certified copies of findings and awards or other final orders for the purpose of having judgment entered and execution issued by the clerk of a superior court shall be issued only upon written request of a person entitled to benefits thereunder or by the attorney or authorized representative, and upon payment of the fees prescribed by the Rules of the Administrative Director.

Certified copies of such orders and awards against authorized insurance carriers, authorized self-insured employers, the State of California and all political subdivisions thereof shall be issued only upon receipt of a written request showing good cause therefor.

Every request for a certified copy of any final order must state whether proceedings are pending on reconsideration or judicial review, whether a petition for reconsideration or a writ of review has been filed, and whether the decision, a certified copy of which is requested has become final.

Nothing in these rules, however, shall limit the power of the Workers' Compensation Appeals Board to issue a certified copy at any time upon its own motion without charge.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5806, 5807 and 5808, Labor Code.

#### § 10825. Withholding Certified Copies.

As an alternative to the issuance of an order staying execution, the Workers' Compensation Appeals Board may direct by order that no certified copy be issued. Such an order shall have the same effect as an order staying execution issued under similar circumstances.

(a) Before staying execution or issuing order withholding issuance of a certified copy of an order, decision or award, the Workers' Compensation Appeals Board in its discretion may require the filing of a bond from an approved surety equivalent to twice the probable amount of liability in the case.

(b) The bond shall be filed in the record of the case.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 130, 134, 5105, 5806, 5807, 5808, 5809, 6000, 6001 and 6002, Labor Code.

#### § 10828. Necessity for Bond.

Where a party intending to file for writ of review requests a stay of execution or withholding issuance of a certified copy of the order, decision or award that is the subject of the party's complaint, the request will ordinarily be granted, conditioned upon the filing of a bond from an approved surety equivalent to twice the probable amount of liability in the case.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5808, 5956, 6000, 6001 and 6002, Labor Code.

#### § 10832. Proceedings to Enforce Awards.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 134 and 5300, Labor Code.

### **ARTICLE 17. RECONSIDERATION, REMOVAL, AND DISQUALIFICATION**

#### § 10840. Filing Petitions for Reconsideration, Removal, and Disqualification and Answers.

(a) Except as provided in sections 10865 and 10953, petitions for reconsideration, removal, or disqualification and answers thereto may be filed with any district office of the Workers' Compensation Appeals Board or with the office of the Appeals Board in San Francisco. Duplicate copies of petitions filed with a district office shall not also be filed with any other district office or with the Appeals Board in San Francisco.

(b) Except as provided in sections 10865 and 10953, the following persons and entities may file petitions for reconsideration, removal, or disqualification (and answers thereto) electronically within EAMS:

(a) a party, lien claimant, attorney, or other representative who has been assigned an individual EAMS login

and password by the Division of Workers' Compensation as part of an electronic filing trial group; and

(b) a law firm, an insurance company, a self-insured employer, a third party administrator, or lien claimant who has been assigned an organizational EAMS login and password by the Division of Workers' Compensation as part of an electronic filing trial group.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5900, 5902 and 5905, Labor Code.

§ 10842. Contents of Petitions for Reconsideration, Removal, and Disqualification and Answers.

(a) Every petition for reconsideration, removal, or disqualification shall fairly state all of the material evidence relative to the point or points at issue. Each contention contained in a petition for reconsideration, removal, or disqualification shall be separately stated and clearly set forth. A failure to fairly state all of the material evidence may be a basis for denying the petition.

(b) Each petition for reconsideration, removal, or disqualification, and each answer thereto, shall support its evidentiary statements by specific references to the record.

(1) References to any stipulations, issues, or testimony contained in any Minutes of Hearing, Summary of Evidence, or hearing transcript shall specify: (A) the date and time of the hearing; and (B) if available, the page(s) and line number(s) of the Minutes, Summary, or transcript to which the evidentiary statement relates (e.g., "Summary of Evidence, 5/1/08 trial, 1:30pm session, at 6:11-6:15").

(2) References to any documentary evidence shall specify: (A) the exhibit number or letter of the document; (B) the date and time of the hearing at which the document was admitted or offered into evidence; (C) where applicable, the author(s) of the document; (D) where applicable, the date(s) of the document; and (E) the relevant page number(s) and, if available, at least one other relevant identifier (e.g., line number(s), paragraph number(s), section heading(s)) that helps pinpoint the reference within the document (e.g., "the 6/16/08 report of John A. Jones, M.D., at p. 7, Apportionment Discussion, 3rd full ¶ [Defendant's Exh. B, admitted at 8/1/08 trial, 1:30pm session]").

(3) References to any deposition transcript shall specify: (A) the exhibit number or letter of the document; (B) the date and time of the hearing at which the deposition transcript was admitted or offered into evidence; (C) the name of the person deposed; (D) the date and time of the deposition; and (E) the relevant page number(s) and line(s) (e.g., "the 6/20/08 depo of William A. Smith, M.D., at 21:20-22:5 [Applicant's Exh. 3, admitted at 12/1/08 trial, 8:30am session]").

(c) Copies of documents that have already been received in evidence or that have already been made part of the adjudication file shall not be attached as exhibits to petitions for reconsideration, removal, or disqualification or answers thereto. Except as provided by section 10856, documents attached in violation of this rule may be detached from the petition or answer and discarded.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 126, 5310, 5311, 5900, 5902 and 5904, Labor Code.

§ 10843. Petitions for Removal and Answers.

(a) At any time within twenty (20) days after the service of the order or decision, or of the occurrence of the action in issue, any party may petition for removal based upon one or more of the following grounds:

(1) The order, decision or action will result in significant prejudice.

(2) The order, decision or action will result in irreparable harm.

The petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award. Failure to file the petition to remove timely shall constitute valid ground for dismissing the petition for removal.

(b) The petition for removal and any answer thereto shall be verified upon oath in the manner required for verified pleadings in courts of record.

(c) A copy of the petition for removal shall be served forthwith upon all parties by the petitioner. Any adverse party may file an answer within ten (10) days after service. No supplemental petitions, pleadings or responses shall be considered unless requested or approved by the Appeals Board.

(d) The workers' compensation judge may, within fifteen (15) days of the filing of the petition for removal, rescind the order or decision in issue, or take action to resolve the issue raised in the petition. If the judge so acts, or if the petitioner withdraws the petition at any time, the petition for removal will be deemed automatically dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition for removal as described above.

(e) The filing of a petition for removal does not terminate the judge's authority to proceed in a case or require the judge to continue or cancel a previously scheduled hearing absent direction from the Appeals Board. After a petition for removal has been filed, the workers' compensation judge shall consult with the presiding workers' compensation judge prior to proceeding in the case or continuing or canceling a scheduled hearing.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5310, Labor Code.

#### § 10844. Petitions for Disqualification and Answers.

In addition to the requirements of section 10452, the petition for disqualification and any answer thereto shall be verified upon oath in the manner required for verified pleadings in courts of record.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 5311, Labor Code; and Section 641, Code of Civil Procedure.

#### § 10845. General Requirements for Petitions for Reconsideration, Removal, and Disqualification, and for Answers and Other Documents.

(a) Except as otherwise provided by sections 10840 or 10865, all documents filed in connection with any petition for reconsideration, petition for removal, petition for disqualification or any other matter pending before the Appeals Board shall comply with the requirements of sections 10227, 10228, 10230, 10232, 10235, and 10236, including but not limited to the 25-page limitation of section 10232(a)(10), except that any supplemental petition or answer allowed by the Appeals Board under section 10848 shall not exceed ten pages. Any verification, proof of service, exhibit, or document cover sheet filed with the petition or answer shall not be counted in determining the page limitation.

(b) Upon its own motion, or upon a clear and convincing showing of good cause, the Appeals Board may allow the filing of a petition, answer, or supplemental petition or answer that does not comply with the provisions of subdivision (a), including but not limited to the page limitations. A request to exceed the page limitations shall be made by a separate petition, made under penalty of perjury, that specifically sets forth the facts or other reasons why the request should be granted.

(c) A document that has been sent directly to the Appeals Board by fax or e-mail will not be accepted for filing, unless otherwise ordered by the Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5310, 5311, 5900 and 5905, Labor Code.

§ 10846. Skeletal Petitions.

A petition for reconsideration, removal, or disqualification may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5310, 5311, 5902, 5903 and 5904, Labor Code.

§ 10848. Supplemental Petitions.

When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. Supplemental petitions or pleadings or responses other than the answer, except as provided by this rule, shall neither be accepted nor deemed filed for any purpose and shall not be acknowledged or returned to the filing party.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5310, 5311 and 5900, Labor Code.

§ 10850. Proof of Service.

Service of copies of any petition for reconsideration, removal, or disqualification or any answer thereto shall be made, in accordance with Rule 10505, on all parties to the case and on any lien claimant, the validity of whose lien is specifically questioned by the petition, and to any case that has been consolidated therewith pursuant to Section 10590. Failure to file proof of service shall constitute valid ground for dismissing the petition.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5310, 5311, 5902 and 5903, Labor Code.

§ 10852. Insufficiency of Evidence.

Where reconsideration is sought on the ground that findings are not justified by the evidence, the petition shall set out specifically and in detail how the evidence fails to justify the findings.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5902 and 5903, Labor Code.

§ 10856. Allegations of Newly Discovered Evidence and Fraud.

Where reconsideration is sought on the ground of newly discovered evidence that could not with reasonable diligence have been produced before submission of the case or on the ground that the decision had been procured by fraud, the petition must contain an offer of proof, specific and detailed, providing:

(a) the names of witnesses to be produced;

(b) a summary of the testimony to be elicited from the witnesses;

(c) a description of any documentary evidence to be offered;

(d) the effect that the evidence will have on the record and on the prior decision; and

(e) as to newly discovered evidence, a full and accurate statement of the reasons why the testimony or exhibits could not reasonably have been discovered or produced before submission of the case.

A petition for reconsideration sought upon these grounds may be denied if it fails to meet the requirements of this rule, or if it is based upon cumulative evidence.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5902 and 5903, Labor Code.

§ 10858. Correction of Errors.

Before a petition for reconsideration is filed, a workers' compensation judge may correct the decision for clerical, mathematical or procedural error or amend the decision for good cause under the authority and subject to the limitations set out in Sections 5803 and 5804 of the Labor Code.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5309, Labor Code.

§ 10859. Orders After Filing of Petition for Reconsideration.

After a petition for reconsideration has been timely filed, a workers' compensation judge may, within the period of fifteen (15) days following the date of filing of that petition for reconsideration, amend or modify the order, decision or award or rescind the order, decision or award and conduct further proceedings. Further proceedings shall be initiated within 30 days from the order of recession. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the new, amended or modified decision. After this period of fifteen (15) days has elapsed, a workers' compensation judge shall not make any order in the case nor correct any error until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration.

Note: Authority cited: Section 5307, Labor Code. Reference: Sections 5906, 5907 and 5908.5, Labor Code.

§ 10860. Report of Workers' Compensation Judge.

Petitions for reconsideration, petitions for removal and petitions for disqualification shall be referred to the workers' compensation judge from whose decisions or actions relief is sought. The workers' compensation judge shall prepare a report that shall contain:

(a) a statement of the contentions raised by the petition;

(b) a discussion of the support in the record for the findings of fact and the conclusions of law that serve as a basis for the decision or order as to each contention raised by the petition, or, in the case of a petition for disqualification, a specific response to the allegations and, if appropriate, a discussion of any failure by the petitioner to comply with the procedures set forth in Rule 10452, and

(c) the action recommended on the petition.

The workers' compensation judge shall submit the report to the Appeals Board within 15 days after the petition is filed unless the Appeals Board grants an extension of time. The workers' compensation judge shall serve a copy of the report on the parties and any lien claimant, the validity of whose lien is specifically questioned by the petition, at the time the report is submitted to the Appeals Board.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5900 and 5906, Labor Code.

§ 10862. Hearing After Reconsideration Granted.

Where reconsideration has been granted and the case referred to a workers' compensation judge for proceedings on reconsideration, the workers' compensation judge shall, upon the conclusion thereof, prepare and serve upon the parties a summary of evidence received in the proceedings after reconsideration granted. Unless otherwise instructed by the panel before which a case is pending, the workers' compensation judge to whom the case has been assigned for further proceedings may rule on requests for postponement, continuance of further hearing, join additional parties, dismiss unnecessary parties where such dismissal is not opposed by any other party to the case, make all interlocutory or procedural orders that are agreed to by all parties, issue subpoenas, rule on motions for discovery, rule on all evidentiary motions and objections, and make all other rulings necessary to expedite and facilitate the trial and disposition of the case. The workers' compensation judge shall not order a medical examination, obtain a recommended disability evaluation, make an order taking the case off calendar, nor make an order approving or disapproving compromise and release.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5309 and 5313, Labor Code.

§ 10864. Authority of Workers' Compensation Judge After Decision After Reconsideration.

After a decision after reconsideration has become final, subsequent orders and decisions in a case may be made by any workers' compensation judge to whom the case is assigned pursuant to Section 10348, including orders approving or disapproving compromise and release, orders allowing or disallowing liens, orders for enforcement of the decision of the Appeals Board, orders granting or denying petitions to reopen, orders rescinding, altering or amending the decision of the Appeals Board for good cause under Labor Code Section 5803, orders for increased compensation under Labor Code Section 5814, orders terminating liability, orders for commutation and orders resolving issues that the Board in its decision has left for determination by a workers' compensation judge.

A workers' compensation judge may not make an order correcting a decision after reconsideration for clerical, mathematical, or procedural error. Requests for such correction shall be acted on by the panel that made the decision or if the composition of the Board has changed, by the successor panel.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5900, 5910 and 5911, Labor Code.

§ 10865. Reconsideration of Arbitration Decisions Made Pursuant To-Labor Code Sections 3201.5 and 3201.7.

(a) A petition for reconsideration from an arbitration decision made pursuant to Labor Code Section 3201.5(a)(1) or Section 3201.7(a)(1) (known as "carve-out" cases) shall be filed directly with the office of the Appeals Board in San Francisco within twenty (20) days of the service of the final order, decision, or award made and filed by the arbitrator or board of arbitrators. A copy of the petition for reconsideration shall be served on the arbitrator or arbitration board.

(b) Notwithstanding any other provision of these rules, a petition for reconsideration in a carve-out case shall be filed directly with the office of the Appeals Board in San Francisco, and not with any district office, including the San Francisco district office. The street address and the post office box address of the Appeals Board may be found at the website of the Department of Industrial Relations, Workers' Compensation Appeals Board (currently, at [http://www.dir.ca.gov/wcab/WCAB\\_PetitionforReconsideration.htm](http://www.dir.ca.gov/wcab/WCAB_PetitionforReconsideration.htm)) or by telephoning the Appeals Board in San Francisco (currently, (415) 703-4550). Any petition for reconsideration in a carve-out case that is received by any district office shall neither be accepted for filing nor deemed filed for any purpose. If a carve-out petition for reconsideration is submitted to a district office in violation of this rule, the petition shall be returned to the petitioner with a letter referencing this rule, noting that the petition was improperly submitted to a district office and has been rejected, and indicating that the petition should be filed directly with the Appeals Board in San Francisco consistent with this rule.

(c) The petition for reconsideration in a carve-out case, which shall be submitted with a document cover sheet, shall also comply with each of the following requirements:



(1) it shall be captioned so as to identify it as a "Petition for Reconsideration from Arbitrator's Decision Under Labor Code section 3201.5 or 3201.7" and it shall caption: (A) the injured employee's first and last names; (B) the name(s) of the defendant(s); (C) the alternative dispute resolution (ADR) case number (i.e., the carve-out arbitration case number); and (D) the Workers' Compensation Appeals Board adjudication case number, if previously assigned;

(2) it shall set forth the date on which the arbitrator or board of arbitrators served the arbitration decision. Proof of service of the arbitration decision on the parties shall be either by a verified statement of the arbitrator or the board of arbitrators indicating the date of service and listing the names and addresses of the persons served or by written acknowledgment of receipt by the parties at the time of the arbitration proceedings;

(3) it shall append, under a document separator sheet a copy of that portion of the collective bargaining agreement relating to the workers' compensation arbitration and reconsideration processes;

(4) it shall append, under a document separator sheet, a completed application for adjudication of claim (but without any venue designation), which is required solely for the purpose of obtaining the information set forth therein (e.g., the injured employee's date(s) of injury and date of birth; the names and mailing addresses of the parties); therefore, it shall not be deemed an application for purposes of Labor Code section 4064(c); and

(5) it shall contain a proof of service of the petition, including service on the arbitrator or board of arbitrators.

(d) After the filing of the carve-out petition for reconsideration, an adjudication file will be created and an adjudication case number will be assigned, if there is no existing adjudication case number. Any new adjudication case number will be served by the Appeals Board on the parties and attorneys, and on the arbitrator or board of arbitrators, at the addresses listed in the proof of service to the petition.

(e) Following the Appeals Board's service of the adjudication case number (or, if there is an existing case, following the filing of the carve-out petition for reconsideration), and until the Appeals Board issues a decision disposing of all issues raised in the petition, all further documents shall be filed directly with the office of the Appeals Board in San Francisco, and not with any district office.

(f) Within 15 days after receiving the petition for reconsideration, the arbitrator or board of arbitrators shall submit to the Appeals Board in San Francisco a photocopy of the complete record of proceedings, including: (1) the transcript of proceedings, if any; (2) a summary of testimony if the proceedings were not transcribed; (3) the documentary evidence submitted by each of the parties; (4) an opinion that sets forth the rationale for the decision; and (5) a report on the petition for reconsideration, consistent with the provisions of section 10860. The original arbitration record shall not be filed.

(g) The Appeals Board may scan the petition for reconsideration, any answer, and the photocopied record of the arbitration proceedings into the adjudication file within EAMS. Upon scanning, the paper documents shall be destroyed.

(h) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

(i) After an arbitration decision has been made, the arbitrator or board of arbitrators shall maintain possession of the original record of the arbitration proceedings until the time for filing a petition for reconsideration has passed. Thereafter one of the parties may be designated custodian of the arbitration record as provided for in the collective bargaining agreement.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 3201.5 and 3201.7, Labor Code.

§ 10866. Reconsideration of Arbitrator's Decisions or Awards Made Pursuant to the Mandatory or Voluntary Arbitration Provisions of Labor Code Sections 5270 through 5275.

(a) Any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration

provisions of Labor Code Sections 5270 through 5275 shall be subject to the reconsideration process as set forth in Labor Code Sections 5900 through 5911 and Rules 10842 through 10850. The parties, respectively, shall serve the arbitrator with the petition for reconsideration and the answer.

(b) A petition for reconsideration from any final order, decision or award filed by an arbitrator under the mandatory or voluntary arbitration provisions of Labor Code sections 5270 through 5275, and any answer to such a petition, may be filed with any district office or with the office of the Appeals Board in San Francisco. Duplicate copies of petitions filed with a district office shall not also be filed with any other district office or with the Appeals Board in San Francisco.

(c) When a petition for reconsideration is filed from any final order, decision or award made by an arbitrator under Labor Code Sections 5270 through 5275, the arbitrator shall prepare and serve a report on reconsideration as provided in Rule 10860. Upon completion of the report on reconsideration, the arbitrator shall concurrently forward the arbitrator's original report and a photocopy of the complete arbitration file directly to the presiding workers' compensation judge of the district office having venue over the matter. Upon receipt of the arbitrator's original report and the photocopy of the arbitration file, the district office shall scan the report and the photocopied file into the EAMS adjudication file and, after scanning, shall destroy these documents. Thereafter, the adjudication file shall be electronically transferred to the Appeals Board for action on the petition for reconsideration or, to the extent that the adjudication file is in paper form, the file shall be delivered to the Appeals Board.

(d) The petition for reconsideration, any answer, and the arbitration record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

(e) The costs of photocopying the arbitrator's file shall be reimbursed to the arbitrator in accordance with the provisions of Labor Code section 5273, within 30 days after the liable party or parties receives the arbitrator's billing for those costs.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 5273, 5275, 5277(c) and 5900-5911, Labor Code.

§ 10867. Report of Arbitrator. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5275, 5277(c) and 5900-5911, Labor Code.

§ 10868. Reconsideration of Settlement Conference Referees' Decisions or Awards. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 111, 5502 and 5900, Labor Code.

§ 10869. Report of Settlement Conference Referee. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 111, 5502 and 5307, Labor Code.

## **ARTICLE 18. SETTLEMENTS**

§ 10870. Approval of Compromise and Release.

Agreements that provide for the payment of less than the full amount of compensation due or to become due and undertake to release the employer from all future liability will be approved only where it appears that a reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties. No agreement shall relieve an employer of liability for vocational rehabilitation benefits unless the Workers' Compensation Appeals Board makes a finding that there is a good faith issue which, if resolved against the injured employee, would defeat the employee's right to all workers' compensation benefits.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4646, 5001, 5002 and 5100.6, Labor Code.

§ 10874. Form.

Every compromise and release agreement shall comply with the provisions of Labor Code Sections 5003-5004 and conform to a form provided by the Appeals Board.

Note: Authority cited: Sections 133, 5307, Labor Code. Reference: Sections 5001, 5002, 5003, 5004, Labor Code.

§ 10875. Procedures -Labor Code Section 3761.

Where the insurer has attached a declaration to the compromise and release agreement or stipulations with request for award that it has complied with the provisions of Labor Code Sections 3761, subdivision (a), and 3761, subdivision (b), the Workers' Compensation Appeals Board may approve the compromise and release or stipulations with request for award without hearing or further proceedings.

Where a workers' compensation judge or the Appeals Board has approved a compromise and release or stipulations with request for award and the insurer has failed to show proof of service pursuant to Labor Code Section 3761, subdivision (b), the workers' compensation judge or the Appeals Board, after giving notice and an opportunity to be heard to the insurer, shall award expenses as provided in Labor Code Section 5813 upon request by the employer.

Any request for relief under Labor Code Section 3761, subdivision (b), or Labor Code Section 3761, subdivision (d), shall be made by the filing of a petition pursuant to Rule 10450, together with a Declaration of Readiness to Proceed.

This rule shall apply to injuries on or after January 1, 1994.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 3761, Labor Code.

§ 10878. Settlement Document as an Application.

The filing of a compromise and release agreement or stipulations with request for award shall constitute the filing of an application which may, in the Workers' Compensation Appeals Board's discretion, be set for hearing, reserving to the parties the right to put in issue facts that might otherwise have been admitted in the compromise and release agreement or stipulations with request for award. If a hearing is held with this document used as an application, the defendants shall have available to them all defenses that were available as of the date of filing of this document. The Workers' Compensation Appeals Board may thereafter either approve the settlement agreement or disapprove it and issue findings and award after hearing has been held and the matter submitted for decision.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5001, 5002, 5500 and 5702, Labor Code.

§ 10882. Action on Settlement Agreement.

The Workers' Compensation Appeals Board shall inquire into the adequacy of all compromise and release agreements and stipulations with request for award, and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5001, 5002 and 5702, Labor Code.

§ 10886. Service on Lien Claimants.

Where a lien claim is on file with the Workers' Compensation Appeals Board or where a party has been served

with a lien, and a compromise and release agreement or stipulations with request for award or order is filed, a copy of the compromise and release agreement or stipulations shall be served on the lien claimant. No lien claim shall be disallowed or reduced unless the lien claimant has been given notice and an opportunity to be heard.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903, 4903.1, 4903.4, 4904, 4904.1, 4905 and 4906, Labor Code.

#### § 10888. Resolution of Liens.

Before issuance of an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or withdrawn, the parties shall make a good-faith attempt to contact the lien claimants and resolve their liens. A good-faith attempt requires at least one contact of each lien claimant by telephone or letter.

After issuing an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or withdrawn, the workers' compensation judge shall

(1) set the case for a lien conference, or

(2) issue a ten (10) day notice of intention to order payment of any such lien in full or in part, or

(3) issue a ten (10) day notice of intention to disallow any such lien. Upon a showing of good cause, the workers' compensation judge may once continue a lien conference to another lien conference. If a lien cannot be resolved at a lien conference, the workers' compensation judge shall set the case for trial.

An agreement to "pay, adjust or litigate" a lien, or its equivalent, or an award leaving a lien to be adjusted, is not a resolution of the lien.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903, 4903.1, 4904, 5001, 5002 and 5702, Labor Code.

#### § 10890. Walk-Through Documents. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4053, 4054, 5001, 5002, 5702 and 5710, Labor Code.

### **ARTICLE 19. SUBSEQUENT INJURIES FUND**

#### § 10940. Application.

All claims against the Subsequent Injuries Fund shall be by an application in writing setting forth the date and nature of the industrial injury, together with all factors of disability alleged to have pre-existed said injury. Allegations of additional factors must be by amended application.

All applications against the Subsequent Injuries Fund shall be filed with the Appeals Board and a copy shall be served by mail on the Division of Workers' Compensation, Subsequent Injuries Fund, in accordance with Sections 10505 and 10507. Where joinder of the Subsequent Injuries Fund has been ordered by the workers' compensation judge or the Appeals Board, the applicant shall forthwith file and serve an application as provided herein.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4750, 4751, 4753, 4753.5 and 4754.5, Labor Code.

#### § 10942. Service.

Service of all documents directed to the Subsequent Injuries Fund shall be made on the Division of Workers' Compensation, Subsequent Injuries Fund.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4750, 4751, 4753, 4753.5 and 4754.5, Labor Code.

§ 10944. Notice of Hearing.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5502, Labor Code.

§ 10946. Medical Reports in Subsequent Injuries Benefits Trust Fund Cases.

When an application is filed against the Subsequent Injuries Benefits Trust Fund, any party who has previously filed medical reports shall forthwith serve copies on the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund, and in no case later than thirty (30) days prior to the mandatory settlement conference or other hearing, unless service is waived by the Division of Workers' Compensation, Subsequent Injuries Benefits Trust Fund.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code.

#### **ARTICLE 20. REVIEW OF ADMINISTRATIVE ORDERS**

§ 10950. Petitions Appealing Orders Issued by the Administrative Director.

Except as provided in Rule 10953, petitions appealing orders issued by the Administrative Director shall be filed in accordance with the provisions of Article 9 (section 10290 et seq.) of the Rules of the Court Administrator. Where a workers' compensation judge has determined such an appeal, any aggrieved party may file a petition for reconsideration in accordance with the provisions of Labor Code section 5900 et seq. and Appeals Board Rules 10840 et seq.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Sections 129, 4603, 4604, 5300, 5301 and 5302, Labor Code.

§ 10952. Appeal of Notice of Compensation Due. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 129, 5300 and 5301, Labor Code.

§ 10953. Petition Appealing Audit Penalty Assessment - Labor Code Section 129.5(g).

(a) An insurer, self-insured employer, or third-party administrator may appeal a civil penalty assessment issued pursuant to subdivision (g) of Labor Code section 129.5 by filing a petition with any district office or with the Appeals Board in San Francisco, in the same time and manner as provided by the Labor Code and Rule 10840 et seq. for the filing of a petition for reconsideration, except that a copy of the petition also shall be served on the Administrative Director. The petition shall be accompanied by a completed document cover sheet.

(b) The Administrative Director may answer the petition in the same time and manner provided for the filing of an answer to a petition for reconsideration.

(c) After the filing of a petition appealing a civil penalty assessment issued pursuant to Labor Code section

129.5(g), an adjudication case will be created and an adjudication case number will be assigned. The adjudication case number will be served by the Appeals Board on the Administrative Director and on the parties and attorneys listed on the proof of service to the petition.

(d) Within 15 days after the Administrative Director receives a copy of petition appealing a civil penalty assessment issued pursuant to Labor Code section 129.5(g), the Administrative Director shall submit to the Appeals Board in San Francisco a certified copy of the complete record of proceedings created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.) The certified copy of the record shall include, but shall not necessarily be limited to: (1) the Order to Show Cause Re: Assessment of Civil Penalty and Notice of Hearing; (2) the Answer to the Order to Show Cause; (3) any amended complaint or supplemental Order to Show Cause that may have been issued, and any Amended Answer filed in response thereto; (4) any pre-hearing written statement filed by the claims administrator; (5) any pre-hearing Minutes and pre-hearing Orders; (6) the Minutes of any Hearing, a transcript or summary of any oral testimony offered at the hearing, any documentary evidence or affidavits offered at the hearing; and (7) the Administrative Director's written Determination and statement of the basis for the Determination. The original record of the proceedings conducted pursuant to Labor Code section 129.5(g) shall not be filed.

(e) The Appeals Board may scan the appeal, any answer, and the photocopied record of the Administrative Director's proceedings into the adjudication file within EAMS. Upon scanning, the paper documents may be destroyed.

(f) The Appeals Board shall determine the appeal using the record created by the Administrative Director in accordance with Article 6 of the Administrative Director's rules (Cal. Code Regs., tit. 8, § 10113 et seq.) The Administrative Director's record shall be deemed part of the Workers' Compensation Appeals Board's record of proceedings under section 10750.

Note: Authority cited: Sections 133, 5307, 5309 and 5708, Labor Code. Reference: Section 129.5(g), Labor Code.

#### § 10955. Rehabilitation Appeals. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 139.5, 4645 and 5500, Labor Code.

#### § 10956. Rehabilitation Records.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 139.5, 5708 and 5709, Labor Code.

#### § 10957. Deposition of Rehabilitation Consultants. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5708, Labor Code.

#### § 10958. Hearing and Burden of Proof.

Proceedings instituted under Section 10955 shall be assigned, heard and determined in the same manner as proceedings instituted for the collection of other compensation except that the burden of proof shall be on the person disputing the finding or determination of the Rehabilitation Unit.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5708, Labor Code.

**ARTICLE 21. GENERAL**

§ 10960. Operative Effect of Rules 10300 through 10958.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Statutes of 1989, Chapters 892 and 893; and Statutes of 1993, Chapter 121.

§ 10961. Operative Effect of Rules 10960 through 10999.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Statutes of 1989, Chapters 892 and 893; and Statutes of 1993, Chapter 121.

§ 10963. Administrative Director of the Division of Workers' Compensation.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 110 and 111, Labor Code.

§ 10964. Office of Benefit Determination.

Note: Authority cited: Sections 133 and 5309, Labor Code. Reference: Section 124, Labor Code.

§ 10965. Application for Adjudication.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5500, Labor Code.

§ 10966. Declaration of Readiness to Proceed.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 134, 5500 and 5502, Labor Code.

§ 10967. Objection to Declaration of Readiness to Proceed.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 134, 5500 and 5502, Labor Code.

§ 10968. Answers.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5500, Labor Code.

§ 10969. Procedural Requirements.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5500, Labor Code.

§ 10973. Service by the Parties and Lien Claimants.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

§ 10974. Service on Attorney or Agent.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

§ 10975. Proof of Service by Parties and Lien Claimants.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5316, Labor Code.

§ 10976. Hearing.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5502 and 5709, Labor Code.

§ 10977. Notice of Hearing.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5504, Labor Code.

§ 10978. Physicians' Reports as Evidence.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4620, 4628, 5703, 5708 and 5709, Labor Code.

§ 10979. Physicians' Reports.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4620, 5500, 5703, 5708 and 5709, Labor Code.

§ 10980. Cross-Examination of Physicians.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Article XIV, Section 4, California Constitution; and Sections 4600 through 5709, Labor Code.

§ 10984. Impartial Medical Examiners.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 122 and 139, Labor Code.

§ 10985. Disputes Regarding Labor Code Section 4600 Liens.

Note: Authority, Sections 133 and 5307, Labor Code. Reference: Section 4903.4, Labor Code.

§ 10986. Binding Arbitration for Lien Claim Disputes.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4903.4, Labor Code.

§ 10987. Pre-Application Attorney Fees.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 4903 and 4906, Labor Code.



§ 10987.1. Information Request Form.

Note: Authority cited: Sections 133, 5307, 5407 and 5401.7, Labor Code. Reference: Section 5401.5, Labor Code.

§ 10987.2. Information Response Form.

Note: Authority cited: Sections 133, 5307 and 5401.6, Labor Code. Reference: Section 5401.6, Labor Code.

§ 10987.3. Operative Effect of Rules 10987.1 and 10987.2.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 4903 and 4906, Labor Code; and Statutes of 1993, Chapter 121.

§ 10988. Reconsideration of Arbitrators' Decisions or Awards.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5277(c), 5275(d), and 5900 through 5911, Labor Code.

§ 10989. Report of Arbitrator.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5275(c), 5275(d), and 5900 through 5911, Labor Code.

§ 10990. Reconsideration of Settlement Conference Referees' Decisions or Awards.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 111 and 5502, Labor Code.

§ 10991. Report of Settlement Conference Referee.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 111 and 5502, Labor Code.

§ 10992. Rehabilitation Appeals.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 139.5, 4645(d) and 5500, Labor Code.

**ARTICLE 22. ARBITRATION**

§ 10995. Mandatory Arbitration. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5270 through 5277, Labor Code.

§ 10996. Voluntary Arbitration. [Repealed]

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5270 through 5277, Labor Code.

§ 10997. Request for Arbitration.

In no event will arbitration be permitted after the taking of testimony in any proceeding.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Sections 5270 through 5277, Labor Code.

§ 10998. Disqualification of Arbitrator.

This rule applies to injuries occurring on or after January 1, 1990, except that this rule applies regardless of the date of injury for voluntary arbitration pursuant to Labor Code section 5275, subdivision (b). After service of a list of panel members pursuant to rule 10995, any party may, within six (6) days, petition the workers' compensation judge to remove any member from the panel pursuant to section 170.1 of the Code of Civil Procedure. In event the presiding workers' compensation judge finds cause under section 170.1 of the Code of Civil Procedure, the presiding workers' compensation judge shall remove the member or members of the panel challenged and add to the original list the appropriate number of arbitrators at random to make a full panel and, within six (6) days, serve the list on the parties. In event the presiding workers' compensation judge selects an arbitrator pursuant to rule 10995, the parties will have six (6) days after service of the name of the arbitrator to petition to disqualify that arbitrator pursuant to section 170.1 of the Code of Civil Procedure. If the presiding workers' compensation judge finds cause, the presiding workers' compensation judge shall assign another arbitrator pursuant to Labor Code section 5271, subdivision (d) and order the issue or issues in dispute submitted to that arbitrator.

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5271(d), Labor Code.

§ 10999. Arbitrator Fee and Cost Disputes.

Any dispute involving an arbitrator's fee or cost shall be resolved by the presiding workers' compensation judge of the appropriate local office or, in his or her absence, the acting presiding workers' compensation judge.

Any request to resolve a dispute about arbitrator fees or costs must be accompanied by any written agreement pertaining to arbitrator fees or costs and a statement that shall include the nature of the dispute and an itemization of the hours spent in actual arbitration hearing, in preparation for arbitration, and in preparation of the decision. The statement shall also include an itemization of the verifiable costs including use of facility, reporters and transcript preparation.

An arbitrator fee shall not exceed a reasonable amount. In establishing a reasonable fee, the Presiding Workers' Compensation Judge shall consider:

- (a) responsibility assumed by the arbitrator;
- (b) experience of the arbitrator;
- (c) number and complexity of the issues being arbitrated;
- (d) time involved; and
- (e) expeditiousness and completeness of issue resolution.

The presiding workers' compensation judge of each local office shall maintain statistics on all arbitration fees awarded pursuant to Labor Code section 5273(c) including the amount thereof and rationale or basis for the award pursuant to (a) through (e) herein above.

Arbitration costs will be allowed in a reasonable amount pursuant to Labor Code section 5273, subdivision (a).

Note: Authority cited: Sections 133 and 5307, Labor Code. Reference: Section 5273(c), Labor Code.